**BEFORE THE FEDERAL ELECTION COMMISSION**

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| In the Matter of | ) | |
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| | ) | MURs 4322 and 4650 |
| Enid '94 and Enid Greene, as Treasurer | ) | |
| Enid '96 and Enid Greene, as Treasurer | ) | |

# BRIEF OF RESPONDENTS ENID '94, ENID '96, AND ENID GREENE, AS TREASURER, IN OPPOSITION TO THE OFFICE OF GENERAL COUNSEL'S PROBABLE CAUSE RECOMMENDATION

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## I. INTRODUCTION.

On July 20, 1998, the General Counsel recommended that the Federal Election Commission (hereinafter "FEC" or "the Commission") find probable cause to believe that Enid '94 and Enid '96 (hereinafter "the Enid committees"), and Enid Greene, as treasurer, violated 2 U.S.C. § 434(b) by failing to report numerous contributions and for filing inaccurate reports; 2 U.S.C. § 441a(f), by knowingly accepting contributions in violation of the limitations imposed by section 441a; 2 U.S.C. § 441f, by accepting contributions in the name of another; and 11 C.F.R. § 110.4(c)(2), by failing to return cash contributions in excess of $100. In addition, the General Counsel recommended that the Commission find probable cause to believe that Enid '94, and Enid Greene, as treasurer, violated 2 U.S.C. § 441b(a), by accepting a corporate contribution from Keystone Productions, Inc.

Counsel for the Enid committees and Enid Greene, as treasurer, respectfully submit this brief in opposition to the General Counsel's probable cause recommendation. Counsel for the Enid committees and Enid Greene, as treasurer, also represent Enid Greene, in her individual capacity, as well as her father, D. Forrest Greene. We are simultaneously submitting briefs in

opposition to the General Counsel's probable cause recommendation with regard to those individuals.

The short response to the allegations against the Enid committees is that all of the purported violations were committed by Joseph P. Waldholtz, without Enid Greene's knowledge, during the time that he was the treasurer of Enid '94 and Enid '96. As a result, Joseph P. Waldholtz alone is solely and personally responsible for these acts. The Enid committees, and Enid Greene, as the current treasurer, should bear no responsibility for the rogue actions of Joseph P. Waldholtz, who used the Enid committees as a tool in his various criminal schemes.

The General Counsel's recommendation that the Commission hold the Enid committees and Enid Greene, as treasurer, responsible for the actions of a rogue treasurer is contrary to a long line of FEC precedent. Moreover, as a matter of law, the Enid committees and Enid Greene, as treasurer, cannot be held liable for the actions of Joseph P. Waldholtz. Fundamental fairness dictates that the Commission reject the General Counsel's recommendation at the outset.

## II. BACKGROUND AND PROCEDURAL HISTORY.

Enid Greene represented the Second District of Utah in the U.S. House of Representatives during the 104th Congress. Enid Greene's principal campaign committee in the 1994 congressional election was named Enid '94. Enid '96 was established to be Enid Greene's principal campaign committee in the 1996 congressional election, but on March 5, 1996, Representative Greene announced that she would not run for re-election.

Joseph P. Waldholtz -- Enid Greene's former husband and D. Forrest Greene's former son-in-law -- served as the treasurer of Enid '94 from its inception on December 21, 1993 until November 14, 1995, when Enid Greene removed him from that position. Similarly, Joseph P. Waldholtz served as treasurer of Enid '96 from its inception on July 31, 1995 until November 14,

1995, when Enid Greene removed him from the position. Accordingly, Joseph P. Waldholtz was the treasurer of the Enid committees at all times relevant to the above-referenced MURs.

**A. The Criminal Investigation.**

On Saturday, November 11, 1995, Enid Greene's world fell apart when Joseph P. Waldholtz, her husband and treasurer of her campaigns, fled Washington, D.C. while under investigation for bank fraud by the U.S. Attorney's Office for the District of Columbia, the FBI, and a federal grand jury (hereinafter "the government" or "the government's investigation").[1/] Over the ensuing weekend, Enid Greene was shocked to discover evidence among Joseph P. Waldholtz's papers that he had defrauded her and had embezzled a substantial amount of money from both of the Enid committees. On November 14, 1995, Ms. Greene notified the Commission that she had removed Joseph P. Waldholtz as treasurer of the Enid committees and had initiated an audit of the committees' records. Ms. Greene retained forensic accounting specialists with the national accounting firm of Coopers & Lybrand, LLP, and directed them to reconstruct completely the campaign records of Enid '94 and Enid '96.

The forensic accountants from Coopers & Lybrand, working with a team of attorneys from Powell, Goldstein, Frazer & Murphy, LLP, spent more than six months reconstructing the Enid committees' records, which had been devastated by the criminal actions of Joseph P. Waldholtz. Then, at a cost of well over $150,000, the Committees filed corrected FEC reports for both Enid '94 and Enid '96 covering *all* of calendar years 1994 and 1995. These amended reports revealed that Joseph P. Waldholtz had committed multiple violations of the Federal

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[1] The General Counsel's Brief incorrectly states that the federal criminal investigators began their inquiry into Enid '94 based on questions raised in Utah regarding the amount of money that Enid Greene was reported to have contributed to her campaign. General Counsel's Brief at 4. In fact, to our knowledge, the investigation was not broadened to include potential election law violations until Ms. Greene and the Enid committees uncovered evidence that Joseph P. Waldholtz had falsified records and had embezzled a substantial amount of money from both Enid '94 and Enid '96 and brought that evidence to the attention of the FEC and the U.S. Attorney.

Election Campaign Act (hereinafter "FECA") and FEC regulations during his tenure as treasurer of the Enid committees. The filing of these amended reports apparently triggered the Commission's initiation of MUR 4650. Enid Greene personally assumed the position of treasurer of the Enid committees on January 26, 1996.

On March 8, 1996, Enid Greene, as treasurer of the Enid committees, filed with the Commission the complaint against Joseph P. Waldholtz that initiated MUR 4322. Along with the complaint, the Committees provided extensive and compelling evidence that, during the time he served as treasurer of the Enid committees, Joseph P. Waldholtz committed *well in excess of 850 violations* of FECA and applicable FEC regulations.

Also on March 8, 1996, on the same day that the materials were filed with the FEC, Enid Greene and the Enid committees provided the U.S. Attorney for the District of Columbia with a copy of the complaint in MUR 4322. By that point in time, D. Forrest Greene, Enid Greene and the Enid committees had already been cooperating for more than four months with an investigation by the U.S. Attorney's Office into the criminal activities of Joseph P. Waldholtz. Enid Greene voluntarily provided the government with reams of documents abandoned by Joseph P. Waldholtz when he fled Washington, D.C. Ms. Greene also gave the government free access to the two homes, one in Salt Lake City, Utah and the other in Washington, D.C., that she shared with Joseph P. Waldholtz.

As a result of the extensive cooperation of Enid Greene, within one month of the disappearance of Joseph P. Waldholtz, the government had substantial evidence to support the allegations that Joseph P. Waldholtz had defrauded both the Wright Patman Congressional Federal Credit Union and First Security Bank of Utah by kiting checks between the two financial institutions. Indictment at 1-7 (Exhibit A); Plea Agreement at 2-3 (Exhibit B).

Moreover, while cooperating with the investigation of the bank fraud allegations, Enid Greene discovered and turned over to the government substantial and compelling evidence that Joseph P. Waldholtz had also committed a truly astounding number of other federal and state crimes. In the decade leading up to his flight from prosecution, Joseph P. Waldholtz:

- Defrauded his grandmother, Rebecca Levenson, an elderly Alzheimer's patient, out of at least $400,000;[2]
- Forged and counterfeited Government National Mortgage Association ("Ginnie Mae") securities as part of his scheme to defraud his grandmother out of hundreds of thousands of dollars;
- Committed perjury in a state court proceeding initiated by his own father to recover the funds that Joseph P. Waldholtz had stolen from his grandmother;
- Defrauded his mother, Barbara Waldholtz, out of her entire life savings -- $96,000 -- by inducing her to cash in her pension, take out a mortgage on the home she owned free and clear, and give the money to him to "invest" for her;[3]
- Misappropriated at least $100,000 from his employer, Republican National Committeewoman Elsie Hillman, and was fired for using her money for expensive hotel suites, first-class airline tickets, and lavish meals while travelling to Republican Party events on her behalf and while working as the Executive Director of Pennsylvania for Bush-Quayle '92;
- Caused Elsie Hillman to violate the Federal Election Campaign Act's prohibition on contributing more than $25,000 in any one year (2 U.S.C. § 441a(a)(3)) in 1990, 1991, and 1992 by failing to keep track of her political contributions, resulting in Mrs. Hillman having to pay a $32,000 civil penalty;
- Converted contribution checks made out to the Utah Republican Party to his own use while employed as the Party's Executive Director;
- Committed bank fraud by using falsified tax returns showing more than $250,000 in annual income from a now-known-to-be non-existent "Waldholtz Family Trust" to obtain a home mortgage from First Security Bank of Utah;

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2/ The crimes involving Rebecca Levenson are especially important to the resolution of these matters, because Joseph P. Waldholtz used a portion of the money that he embezzled from the Enid committees to cover up his prior crimes against his grandmother. See infra at 29-30.

3/ The crimes involving Barbara Waldholtz are also important to the resolution of these matters, because Joseph P. Waldholtz used a portion of the money that he embezzled from the Enid committees to cover up his prior crimes against his mother. See infra at 29-30.

- Committed additional bank fraud violations by kiting checks between accounts Joseph P. Waldholtz maintained with Merrill Lynch, Pittsburgh National Bank, and NationsBank;

- Falsified Ms. Greene's 1994 and 1995 congressional financial disclosure statements;

- Forged Ms. Greene's endorsement on her congressional paychecks on two separate occasions and converted the proceeds to his own use;

- Committed three separate instances of tax fraud involving the tax returns Joseph P. Waldholtz filed for tax years 1992 through 1994; and

- Committed massive (more than 850) violations of the Federal Election Campaign Act and applicable FEC regulations while serving as treasurer of Enid '94 and Enid '96, as alleged in the complaint in MUR 4322

Enid Greene, through her counsel, turned over most of this documentary evidence to the government by the end of 1995. During the six months it took the government to evaluate and corroborate the evidence provided by Enid Greene of Joseph P. Waldholtz's criminal activities, both D. Forrest Greene and Enid Greene continued to cooperate with the government's investigation. By early 1996, however, it was evident that, with so much compelling evidence of Joseph P. Waldholtz's guilt already in hand, the principal focus of the government's investigation had somehow turned to D. Forrest and Enid Greene, including Enid Greene in her position as treasurer of the Enid committees. In particular, the government seemed intent on trying to prove that both D. Forrest and Enid Greene had conspired with Joseph P. Waldholtz to funnel funds belonging to D. Forrest Greene into Enid Greene's 1994 congressional election campaign, in violation of 2 U.S.C. § 441f.

There was no truth to this theory, and both D. Forrest and Enid Greene continued to cooperate with the government. Both D. Forrest and Enid Greene submitted voluntarily to numerous interviews with agents of the government. In addition, both D. Forrest and Enid Greene gave government agents complete and open access to their homes and offices. Both D. Forrest and Enid Greene voluntarily complied with document requests related to Enid '94,

turning over more than 10,000 pages of documents. Enid Greene voluntarily testified before a federal grand jury investigating these transactions on three separate occasions. D. Forrest Greene also voluntarily appeared before the same grand jury.

After nearly five months of exhaustively investigating the financial transactions between D. Forrest Greene, Enid Greene and Joseph P. Waldholtz, the government failed to find any *credible* evidence that D. Forrest and Enid Greene had conspired with Joseph P. Waldholtz to violate 2 U.S.C § 441f. On May 2, 1996 -- seven months after Joseph P. Waldholtz fled Washington, D.C. -- the grand jury returned a twenty-seven-count indictment against Joseph P. Waldholtz for bank fraud concerning his massive check kiting scheme. Indictment at 1-7 (Exhibit A). The grand jury took no action against either D. Forrest, Enid Greene or the Enid committees.

On June 5, 1996, Joseph P. Waldholtz pleaded guilty to a three-count information alleging, *inter alia*, that, as treasurer of Enid '94, he had knowingly and willfully filed a report with the FEC in which he falsely and fraudulently certified that Enid Greene had contributed approximately $1,800,000 of her personal funds to Enid '94 when, in fact, Joseph P. Waldholtz knew that the $1,800,000 had not come from Ms. Greene's personal funds but, instead, had been taken from funds that Joseph P. Waldholtz, by various schemes and devices, obtained from Mr. Greene.[4/] Information at 1-2 (Exhibit C); Plea Agreement at 3-4 (Exhibit B). Based on extensive false representations made by Joseph P. Waldholtz both before and during their

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[4] Joseph P. Waldholtz also pleaded guilty to one count of a twenty-seven-count indictment for bank fraud (18 U.S.C. § 1344) for carrying out a $3 million check-kiting scheme using a joint checking account he shared with Ms. Greene at the Wright Patman Congressional Federal Credit Union. Indictment at 1-8 (Exhibit A); Plea Agreement at 1-3 (Exhibit B). Joseph P. Waldholtz also pleaded guilty to the remaining count in the information, willfully aiding in the filing of a false tax return (26 U.S.C. § 7206(2)) for knowingly providing Ms. Greene with false information regarding the value of stock he had supposedly given to her, knowing that she would incorporate that false information on her 1993 tax return. Information at 3 (Exhibit C); Plea Agreement at 4 (Exhibit B).

marriage. Ms. Greene believed that the funds being contributed to her campaign were legally hers, lawfully contributed to her campaign in accordance with 11 C.F.R. § 110.11.

As part of his plea agreement, Joseph P. Waldholtz agreed to "cooperate" with the U.S. Attorney's investigation of Ms. Greene's 1994 congressional election campaign. This investigation was aimed primarily at discovering whether there was any *credible* evidence that D. Forrest and/or Enid Greene had conspired with Joseph P. Waldholtz to violate 2 U.S.C. § 441f. Plea Agreement at 7 (Exhibit B). In exchange for this guilty plea and pledge of cooperation, the U.S. Attorney agreed not to prosecute Joseph P. Waldholtz for a myriad of other crimes -- including additional charges of bank fraud, tax fraud, forgery, uttering, and numerous FECA violations he committed while he served as treasurer of the Enid committees. Plea Agreement at 4-6 (Exhibit B). No criminal charges were filed against either D. Forrest Greene or Enid Greene, and in fact, the U.S. Attorney's Office issued a declination letter after reviewing the "evidence" presented by Joseph P. Waldholtz.

On November 7, 1996, U.S. District Court Judge Norma Holloway Johnson sentenced Joseph P. Waldholtz to thirty-seven (37) months in federal prison for one count of bank fraud (18 U.S.C. § 1344), one count of making a false statement to the Commission (18 U.S.C. § 1001), one count of making a false report to the Commission (2 U.S.C. §§ 437g(d) and 441(a)), and one count of willfully assisting in the filing of a false tax return (26 U.S.C. § 7206(2)). In its sentencing memorandum, the U.S. Attorney's Office called Joseph P. Waldholtz, "a con artist whose continued pattern of fraud and deceit has assumed pathological dimensions." Government's Memorandum In Aid Of Sentencing at 16 (Exhibit D). Judge Johnson not only agreed, but also sentenced Joseph P. Waldholtz to three additional months in federal prison over and above the sentence sought by the government. Sentencing Memorandum at 3 (Exhibit E).

**B. Procedural History of FEC Investigation.**

As mentioned above, Ms. Greene personally assumed the position of treasurer of the Enid committees on January 26, 1996. On March 8, 1996, Enid Greene, as treasurer of the Enid committees, filed with the Commission the complaint against Joseph P. Waldholtz that initiated MUR 4322. Along with the complaint, the Committees provided extensive and compelling evidence that, during the time he served as treasurer of the Enid committees, Joseph P. Waldholtz committed *well in excess of 850 violations* of FECA and applicable FEC regulations.

One of the central allegations in the complaint was that Joseph P. Waldholtz embezzled nearly $100,000 from the Enid committees in violation of 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15. Complaint at ¶¶ 7, 44-55. Even though this complaint is the basis for MUR 4322, the General Counsel's brief conveniently omits any mention of the massive embezzlement that Joseph P. Waldholtz perpetrated against the Enid committees. Any analysis by the Commission regarding the responsibility of the Enid committees and its current treasurer must take into account the criminal activities of Joseph P. Waldholtz, the former treasurer. Joseph P. Waldholtz's embezzlement from the Enid committees took many different forms, all of which were detailed in the complaint filed by Enid Greene and the Enid committees.

Joseph P. Waldholtz's predominant method of embezzling money from the Enid committees was to simply use wire transfers to move money directly from the Enid committees' bank accounts into his own personal accounts or those of his relatives. Between February 14, 1994 and August 9, 1995, Joseph P. Waldholtz transferred a total of $63,375, in a series of twenty-five (25) transactions, directly from the Enid committees' bank accounts into bank accounts that were either in his name, controlled by him, or in the names of his family members. Complaint at ¶ 44. For example, on March 31, 1994, Joseph P. Waldholtz wired $3,000 from

Enid '94 to the bank account of his mother, Barbara Waldholtz, in Pittsburgh, Pennsylvania. Complaint at ¶ 45. On April 4, 1994, he wired $4,200 from Enid '94 to his personal account at Merrill Lynch in Pittsburgh, Pennsylvania. Complaint at ¶ 46. On May 25, 1995, he wired $2,000 from Enid '96 to the bank account of his grandmother, Rebecca Levenson, in Pittsburgh, Pennsylvania. Complaint at ¶ 47. There were no identifiable legitimate campaign purposes for these transfers. Indeed, the wire transfers to the bank accounts of Joseph P. Waldholtz's relatives were apparently designed to replace funds that Joseph P. Waldholtz had earlier stolen from both his mother and his grandmother.

Joseph P. Waldholtz also embezzled campaign funds from the Enid committees in several other ways. Over a period of two months, he stole a total of thirty-six (36) campaign contribution checks made payable to the Send Enid Greene to Congress Committee (the original name of Enid '94) and deposited them into his personal checking account. Complaint at ¶ 49. He also withdrew a total of $25,950 in cash from the Enid committees, in a series of twenty-five (25) cash withdrawals. Complaint at ¶ 50. On at least twelve (12) separate occasions, he signed campaign contributions over to "Cash," which permitted him to embezzle an additional $6,200 from the Enid committees. Complaint at ¶ 51. On at least seven (7) occasions, he issued campaign checks made payable to himself and used them to withdraw a total of $5,500 from the Enid committees' bank accounts. Complaint at ¶ 52. On three other occasions, he issued Enid '96 campaign checks made payable to Enid Greene and deposited a total of $8,000 into his personal banking account without the knowledge or endorsement of Enid Greene. Complaint at ¶¶ 53(a)-(c).

Finally, Joseph P. Waldholtz used the Enid committee banks accounts interchangeably with his own personal bank accounts to pay his personal bills, including his credit card bills. Complaint at ¶¶ 54, 55. For example, on February 16, 1994, he signed a check, drawn on the Enid '94 account to make a $1,000 payment to a personal First Security Bank VISA account. Complaint at ¶ 54. On November 28, 1994, he authorized a debit memo to transfer $5,000 from an Enid '94 account to his personal First Security Bank VISA account. Complaint at ¶ 55. There were no identifiable legitimate campaign purposes for these payments.

In addition to his various embezzlement schemes, the complaint submitted by Enid Greene alleged that, during the time he served as treasurer of the Enid committees, Joseph P. Waldholtz, on twenty-eight (28) separate occasions, used funds he had obtained by fraud from Mr. Greene, and knowingly and willfully contributed to Enid '94 a total of nine hundred eighty-four thousand dollars ($984,000) in the name of Enid Greene. Complaint at ¶¶ 4, 26(a), 29, 31, and 32. These contributions by Joseph P. Waldholtz violated FECA's prohibition on making contributions in the name of another (2 U.S.C. § 441f), as well as the prohibition on contributing more than $1,000 to a single candidate for any one election (2 U.S.C. § 441a(a)(1)(A)) and the prohibition on contributing more than $25,000 in any one calendar year (2 U.S.C. § 441a(a)(3)).

Clearly, throughout his tenure as treasurer of the Enid committees, Joseph P. Waldholtz also regularly violated 2 U.S.C. § 434(b) by deliberately filing inaccurate reports with the FEC in order to prevent Enid Greene from discovering that he was embezzling campaign funds.

On June 17, 1997 -- more than six months after D. Forrest and Enid Greene were exonerated and Joseph P. Waldholtz was convicted -- the Commission found reason to believe, based on the very same information that led to Joseph P. Waldholtz's conviction, that (1) D.

Forrest Greene violated 2 U.S.C. §§ 441a(a)(1)(A)) and (a)(3) and 2 U.S.C. § 441f by, respectively, making contributions in excess of the $1,000 limit per election, by making contributions in excess of the overall annual $25,000 limit, and by making contributions in the name of another; (2) Enid Greene violated 2 U.S.C. § 441f by knowingly permitting her name to be used to effect these contributions; and (3) the Enid committees and Enid Greene, as treasurer, should be held responsible for various violations of FECA [2 U.S.C. §§ 434(b), 441a(f), 441b(a) and 441ff] and applicable FEC regulations [11 C.F.R. § 110.4(c)(2)] that were committed by Joseph P. Waldholtz during the time he served as treasurer of the Enid committees.

On July 28, 1997, D. Forrest Greene, Enid Greene and the Enid committees filed a joint response to the Commission's reason to believe determination. Five volumes of exhibits documenting Joseph P. Waldholtz's sole personal and individual responsibility for the violations alleged against D. Forrest Greene, Enid Greene, and the Enid committees accompanied the joint response.

For the next several months, D. Forrest and Enid Greene continued to cooperate with the FEC investigation. In September 1997, they both submitted to depositions conducted by the General Counsel. Less than one week after the depositions of D. Forrest and Enid Greene, the existence of the Commission's investigation was leaked to the press in violation of 2 U.S.C. § 437g(a)(12)(A). On October 1, 1997, The Salt Lake Tribune published an article entitled, *FEC Starts Greene Probe*, in which three former employees of Enid '94 – David Harmer, KayLin Loveland, and Peter Valcarce – confirmed that they had been interviewed by representatives of the Office of General Counsel within the past two months. (Exhibit F). The former campaign workers characterized the interviews as "wide-ranging" and gave the reporter the impression that "the FEC investigation is a new one and not limited to the allegations and issues raised in

Greene's complaint [against Joseph P. Waldholtz]." All three former campaign workers cited FECA's confidentiality provision in declining to discuss specific issues raised in their interviews. The fact that they nevertheless confirmed that they had been interviewed by the Office of General Counsel and felt free to characterize the interviews as "wide-ranging" indicated that the witnesses had not been adequately advised as to their duties under FECA by the Office of General Counsel. Despite these egregious violations of 2 U.S.C. § 437g(a)(12)(A), both D. Forrest and Enid Greene continued to cooperate with the General Counsel's investigation.

On December 1, 1997, counsel for D. Forrest and Enid Greene provided the General Counsel with a copy of the contract between Enid '94 and the FEC accounting firm of Huckaby & Associates. On December 17, 1997, counsel for D. Forrest and Enid Greene responded to yet another request for documents from the General Counsel and turned over D. Forrest Greene's personal calendar for 1995 and copies of all of the password-protected documents retrieved from Joseph P. Waldholtz's laptop computer.

During the first two weeks of June 1998, Joseph P. Waldholtz, in preparation for his release from prison, gave interviews to a number of members of the national media. In these prison interviews, Joseph P. Waldholtz repeatedly indicated that neither Enid nor D. Forrest Greene was a knowing participant in his plan to circumvent FECA's regulatory scheme. Joseph P. Waldholtz indicated that he alone was responsible for the violations. Counsel for D. Forrest and Enid Greene provided the General Counsel with copies of the resulting articles on June 18, 1998.

On July 20, 1998 -- approximately one month after Joseph P. Waldholtz's prison interviews -- the General Counsel recommended that the Commission find probable cause to believe that the Committees violated 2 U.S.C. § 434(b), by failing to report numerous

contributions and for filing inaccurate reports; 2 U.S.C. § 441a(f), by knowingly accepting contributions in violation of the limitations imposed by section 441a; 2 U.S.C. § 441f. by accepting contributions in the name of another; and 11 C.F.R. § 110.4(c)(2). by failing to return cash contributions in excess of $100. In addition, the General Counsel recommended that the Commission find probable cause to believe that Enid '94 and Enid Greene, as treasurer, violated 2 U.S.C. § 441b(a), by accepting a corporate contribution from Keystone Productions, Inc.

## III. ARGUMENT.

The Enid committees, and Enid Greene, as treasurer, strongly disagree with the General Counsel's recommendation that the Enid committees should be held culpable for FECA violations committed by Joseph P. Waldholtz. Enid Greene uncovered the hundreds of FECA violations Joseph P. Waldholtz committed in order to prevent the discovery of his efforts to circumvent FECA's regulatory scheme, removed him as treasurer of the Enid committees, informed the Commission of Joseph P. Waldholtz's wrongdoing and spent well in excess of $150,000 to reconstruct and correct the Enid committees' FEC reports. To penalize the Enid committees and Enid Greene, as treasurer, for doing everything in their power to correct Joseph P. Waldholtz's wrongdoing runs counter to a long line of FEC precedents absolving committees for the actions of rogue campaign officials. To penalize the Enid committees under these circumstances would establish a terrible new precedent – one that would forever discourage campaigns from coming forward to disclose wrongdoing by campaign workers

Moreover, the General Counsel attempts to gloss over the fact that there is no legal basis for holding the Enid committees and Enid Greene, as treasurer, responsible for FECA violations committed by Joseph P. Waldholtz during his tenure as treasurer of the Enid committees. The General Counsel spends the first eleven (11) pages of his thirteen (13) page brief discussing

Joseph P. Waldholtz's scheme to use loans he obtained by fraud from D. Forrest Greene to fund the Enid '94 campaign. There is not the slightest mention of the fact that Joseph P. Waldholtz embezzled nearly $100,000 from the Enid committees during the same time period. Only on page twelve (12) of the thirteen (13) page brief does the General Counsel attempt a "legal analysis" of the liability of the Enid committees. The General Counsel's "legal analysis" is conducted almost as an "aside," as if it were a foregone conclusion that the Enid committees and Enid Greene, as the successor treasurer, are liable for the criminal actions of Joseph P. Waldholtz. With one broad brush, the General Counsel begins *and* ends his "legal analysis" in two sentences:

> Joseph Waldholtz engaged in the above malpractices [sic] as treasurer of Enid '94 and Enid '96. Since he was acting as [sic] agent of Enid '94 and Enid '96, the committees are responsible for his actions on their behalf. See MUR 2602.

General Counsel's Brief at 12.

*The General Counsel fails to cite a single case to support the proposition that a campaign committee is always liable for the criminal actions of its agents.* In fact, the General Counsel's probable cause recommendation with regard to the Enid committees and Enid Greene, as successor treasurer, is wrong as a matter of law. Finally, the General Counsel fails to address the inequity of holding the Enid committees and Enid Greene, as treasurer, liable for the actions of a rogue campaign official who not only embezzled nearly $100,000 from the campaigns, but who cost the campaigns an additional $150,000 to correct the record he falsified to hide his criminal actions.

**A. The General Counsel's Probable Cause Recommendation is Contrary to the Commission's Long-Standing Policy of Not Pursuing Enforcement Actions Against Campaign Committees in Cases Where FECA Violations Were Committed by Rogue Committee Officers In Order to Conceal Their Own Personal Criminal Activity.**

The General Counsel's recommendation to the Commission is contrary to the Commission's long-standing policy of not pursuing enforcement actions where the violations are the result of fraudulent activity by a rogue officer. See, e.g., In the Matter of Elwood Broad, PRE-MUR 256, MUR 3549, discussed infra. The FEC has never brought an enforcement action in federal court to seek civil penalties against a committee or a successor treasurer in cases involving fraud committed by a rogue officer. Indeed, the Commission has even followed this long-standing policy with regard to presidential campaigns, where, unlike here, the candidate is contractually liable for the wrongs of his committee agents. See 11 C.F.R. § 9003.1.

The first time the FEC confronted this issue was in 1982, In the Matter of Kathy Luhn, MUR 1402. In that case, Kathy Luhn served as an organizer of a fund-raising event for Congressman James C. Wright, Jr. Ms. Luhn worked on behalf of the Wright Appreciation Committee. After a fund-raising dinner, Ms. Luhn forwarded all proceeds/contributions, except for $9,000, to the Wright Appreciation Committee. Ms. Luhn unlawfully pocketed the $9,000 and used it for her own personal purposes. This matter came to the Commission's attention after receiving a letter from the Wright Appreciation Committee after Ms. Luhn confessed her misdeed. In reporting the error to the FEC, the Wright Appreciation Committee requested that the Commission accept Ms. Luhn's repayment as punishment, with no penalty accruing to the Committee. The Wright Appreciation Committee pointed out to the FEC that they were not aware of the violation, nor did they authorize it. The Commission voted 6-0 to affirm the

recommendation of the Wright Appreciation Committee, which was adopted by the General Counsel. Certification of Commission Action (January 13, 1982).

Several years later, in a case strikingly similar to the instant matters, In the Matter of the Don Ritter for Congress Committee and Don Ritter, as treasurer, and Jerome Kindrachuk, MUR 2137 Representative Don Ritter discovered that Jerome Kindrachuk, the treasurer of the Don Ritter for Congress Committee, had apparently misappropriated committee funds and then falsified the committee's FEC reports to prevent his thefts from being discovered. Representative Ritter immediately fired Mr. Kindrachuk, assumed the position of treasurer himself, and retained the national accounting firm of Peat, Marwick, Mitchell & Co. to conduct a comprehensive investigation of the committee's records.

The General Counsel of the FEC found reason to believe that Mr. Kindrachuk, as treasurer of the Don Ritter for Congress Committee, had knowingly and willingly violated 2 U.S.C. § 434(b) and recommended that the Commission "proceed against Mr. Kindrachuk personally since it is alleged that he prepared the report improperly as part of a scheme to misappropriate funds belonging to the Committee." MUR 2137, General Counsel's Report at 2 (April 23, 1986). The General Counsel then went on to recommend that the Commission take *no* action against the Don Ritter for Congress Committee or Representative Don Ritter as treasurer. Id. at 4. The Commission voted 5-0 to accept the General Counsel's recommendations. Certification of Commission Action (April 28, 1986). Mr. Kindrachuk eventually entered into a conciliation agreement and paid a civil penalty of $13,700 for several FECA violations, including commingling personal and campaign funds. Conciliation Agreement (November 9, 1987). No action was ever taken against the Don Ritter for Congress Committee or Representative Don Ritter, as treasurer.

The Commission has also consistently declined to take enforcement action against campaign committees when committee officials other than the treasurer commit crimes against the committee and then falsify FEC reports to avoid discovery. In In the Matter of Mark E. Barry, MUR 1644, Representative Mickey Edwards, the Edwards in '82 Committee, the Edwards in '84 Committee, and Don Zachritz, treasurer of the Edwards' committees, filed a complaint against the committees' assistant treasurer, Mark Barry, alleging that he had falsified committee reports to hide the fact that he had misappropriated committee funds. The General Counsel recommended that the Commission take action against both the former assistant treasurer, Mr. Barry, for commingling personal and campaign funds, and against the Edwards' committees and Mr. Zachritz, as treasurer, who, the General Counsel argued, had at least constructive knowledge of Mr. Barry's activities. MUR 1644 General Counsel's Report at 8-9 (November 9, 1984). The Commission, by a vote of 5-0, rejected the General Counsel's recommendation to take action against the Edwards' committees and their treasurer and instead authorized the General Counsel to take further action against the assistant treasurer, Mr. Barry, only. Certification of Commission Action (November 30, 1984). Mr. Barry was eventually ordered by a federal district court to pay a $20,000 civil penalty for embezzling approximately $164,000 from the Edwards' committees.

In 1986, the Commission also confronted a similar issue in In the Matter of James V. Sanchelli, MUR 2152. In that case, James Sanchelli served as the treasurer for the Hartnett for Congress Committee during the 1980 election cycle. Without authorization from the Hartnett for Congress Committee, Mr. Sanchelli opened a bank account and began depositing campaign contributions and other funds there. The General Counsel's report revealed that a total of $250,000 was unlawfully taken, with $40,000 of the amount being from committee funds. MUR

2152, General Counsel's Report at 2 (June 23, 1986). The General Counsel recommended that the Commission find reason to believe that Mr. Sanchelli knowingly and willfully violated 2 U.S.C. § 432(b)(3). It is important to note that the General Counsel specifically recommended that the Commission *not* take action against the Hartnett for Congress Committee:

> Although the treasurer of 1982 and 1984 Committees did not place receipts into the depository account as required by the Act and regulations, this Office makes no recommendations regarding these committees at this time, because their failure to do so presently appears to have been the result of Mr. Sanchelli's alleged criminal conduct.

MUR 2152, General Counsel's Report at 4, n. 4 (June 23, 1986) (emphasis added). The Commission voted 6-0 to accept the General Counsel's recommendation. Certification of Commission Action (June 25, 1986).

In 1987 and 1988, the Commission reviewed In the Matter of Kansans for Kline and James R. Kline, Jr., as treasurer; and Major C. Weiss, MUR 2316. Major C. Weiss served as the treasurer of the Kansans for Kline Committee until committee personnel discovered that Mr. Weiss was embezzling campaign funds for personal expenses. In total, Mr. Weiss misappropriated approximately $8,900. The Kansans for Kline Committee reported this illegal activity to the FEC, which prompted an investigation. On January 9, 1987, the Commission found reason to believe that Kansans for Kline, and Mr. Weiss, as treasurer, violated 2 U.S.C. § 434(a)(2)(A)(i), by failing to file the 1986 Pre-General Election Report in a timely manner. Additionally, the Commission found reason to believe that Mr. Weiss violated 2 U.S.C. § 432(b)(3), based on allegations of misappropriation of campaign funds. Afterwards, the General Counsel recommended that the Commission enter into conciliation with Kansans for Kline and James R. Kline, Jr., as treasurer, prior to a finding of probable cause. MUR 2316, General Counsel's Report at 12 (November 15, 1988). The Commission voted 5-1 to accept this recommendation. Certification of Commission Action (December 2, 1988). Ultimately,

Kansans for Kline agreed to pay a fine of just $350 for its violation. See Letter to the FEC, dated August 11, 1989, from Phillip D. Kline, counsel to Kansans for Kline.

In 1988, the Office of the General Counsel also reviewed In the Matter of Rhodes for Congress Committee, Kent H. Mulkey, as treasurer, and John J. O'Neill, et al., MUR 2602. John J. O'Neill served as both finance chairman and the assistant treasurer of the Rhodes for Congress Committee. The allegations concerned his collection of a series of "loans" from various contributors. The "loans" were actually unlawful contributions. On April 15, 1988, the General Counsel recommended that the Commission find reason to believe that the Rhodes for Congress Committee and Kent H. Mulkey, as treasurer, violated 2 U.S.C. §§ 441f, 441a(f), 441b(a), 434(b)(2)(A), 434(b)(3)(A), 434(b)(4)(A), 434(b)(5)(A), and 434(b)(3)(E)), amongst other recommendations concerning Mr. O'Neill and the contributors. Six years later, in 1994, the Commission entered into a conciliation agreement with the Rhodes for Congress Committee, and John J. Rhodes, III, as treasurer. In the agreement, the Commission recognized several "unusual circumstances." Because of the circumstances, the Commission recommended a civil penalty of just $25,000, as opposed to the "appropriate penalty" that they had determined to be $108,000. The circumstances that effected the Commission's decision were: that Mr. O'Neill had been involved in many of the violations and in fact had pleaded guilty to violating 18 U.S.C. § 1001; that one of the "contributors" had been subject to criminal prosecution and had been convicted for several matters; and lastly, that the candidate, Mr. Rhodes, who was no longer in office, had become treasurer of his committee and had assumed personal responsibility in the matter. Conciliation Agreement at 11 (December 2, 1994).

In 1989, the Commission reviewed In the Matter of Michael Caulder, PRE-MUR 222, MUR 3015. William Batoff, the treasurer of the Alerted Democratic Majority PAC (hereinafter

"ADM"), brought the matter to the FEC's attention. Mr. Batoff discovered that Mr. Caulder had embezzled a total of approximately $52,000 of ADM's funds. Mr. Batoff also discovered that Mr. Caulder had prepared and filed inaccurate reports with the FEC in order to conceal his illegal activities. Upon discovery of this information, Mr. Batoff notified the FEC and the law enforcement authorities. He also performed an audit of ADM's accounts and filed amended reports with the FEC. After performing its investigation, the General Counsel recommended that the Commission find reason to believe that ADM and Mr. Batoff, as treasurer, violated 2 U.S.C. § 434(b). PRE-MUR 222 General Counsel's Report at 3 (November 21, 1989). The Commission found reason to believe with regard to ADM, Mr. Batoff, as treasurer, and Mr. Caulder, but then voted to take no further action against ADM and Mr. Batoff. Certification of Commission Action (December 6, 1989).

In 1992, the Commission reviewed In the Matter of Elwood Broad, PRE-MUR 256, MUR 3549. Catherine Matz, treasurer of Yatron for Congress Committees, reported Mr. Broad, the former treasurer of Yatron for Congress Committees, to the Commission after finding the Mr. Broad had misappropriated approximately $14,000 from the committees. The allegations included violations of 2 U.S.C. § 432(b)(3), for commingling, and 2 U.S.C. § 434(b), for failing to file accurate reports of the committees' financial activities. In its report, the Office of the General Counsel noted:

> Normally, such a failure to file accurate reports would subject the offending committee and its treasurer to liability. However, the Commission has generally not proceeded against, or gone beyond findings of reason to believe as to, committees where inaccurate reporting resulted from fraudulent activity. See, e.g., MURs 3015, 2152, 2137; but cf. MUR 2316 (where the Commission conciliated after a finding of reason to believe with a committee which had failed to timely file a report in a situation where fraudulent activity was involved).

PRE-MUR 256, General Counsel's Report at 5 (June 5, 1992). The General Counsel did not make a recommendation for a finding of reason to believe. The Commission voted 6-0 to accept the General Counsel's recommendation. Certification of Commission Action (June 17, 1992).

In late 1994, the Commission approved the final audit report on the Tsongas Committee, Inc., Senator Paul Tsongas' 1992 presidential campaign committee. The Commission *rejected*, by a vote of 5-1, a staff recommendation that the committee be held responsible for the actions of the committee's chief fundraiser. The fundraiser, Nicholas Rizzo, had solicited illegal campaign contributions in the form of loans from several contributors and then embezzled most of the money. Unlike House and Senate candidates, presidential candidates and their principal campaign committees, as a condition for obtaining federal matching funds, are required to sign an agreement with the FEC making them responsible for the actions of the committee's agents. 11 C.F.R. § 9003.1. Both Senator Tsongas and the Tsongas Committee had signed such agreements. Nevertheless, the Commission decided that for equitable reasons, it would be inappropriate to hold the Tsongas Committee responsible for the actions of a rouge committee officer. See FEC Letter to the Tsongas Committee (December 16, 1994).

At the same time that the Commission was reviewing the audit report regarding the Tsongas committee, the Commission was considering taking enforcement action against the committee and its treasurer. In the Matter of the Tsongas Committee, Inc., and George Kokinos, as treasurer, MUR 3585. On November 29, 1994, the FEC found reason to believe that the Tsongas Committee and George Kokinos, as treasurer, violated 2 U.S.C. §§ 432(h)(1), 441a(f) and 441b(a). In June 1995, the Office of General Counsel further recommended that the Commission find reason to believe that the Tsongas Committee, and George Kokinos, as treasurer, violated 2 U.S.C. § 441a(f), for accepting excessive contributions, and 2 U.S.C. §

434(b), for misstating financial information on its disclosure reports. The Commission accepted the General Counsel's recommendations on July 18, 1995. More than one year later, on November 19, 1996, the General Counsel recommended that the Commission find probable cause concerning the same violations. The Tsongas Committee responded to the General Counsel's Brief on January 15, 1997. Sadly, Senator Tsongas passed away two days later, on January 17, 1997.

Following the death of Senator Tsongas, the Office of the General Counsel reversed its position regarding the findings concerning the Tsongas Committee and George Kokinos, as treasurer. On February 25, 1997, the Office of the General Counsel filed an amended brief requesting that the Commission take no further action against the Tsongas Committee and Mr. Kokinos, as treasurer. General Counsel's Brief at 14 (February 25, 1997). The General Counsel based its recommendation on three factors: first, Senator Tsongas had passed away; second, the Committee would no longer be involved in the political process and had little cash or resources from which to satisfy any penalty; and third, the General Counsel had concerns regarding the statute of limitations. General Counsel's Brief at 5 (February 25, 1997). Additionally, the General Counsel stated, "[f]urther pursuit of these matters would not be an efficient use of the Commission's limited resources." General Counsel's Brief at 6 (February 25, 1997).

In light of this well-established line of precedents, the Commission should take no further action against Enid '94, Enid '96, and Enid Greene, as treasurer of the Enid committees. The Commission's long-standing policy is *not* to penalize committees and treasurers who do the "right" thing, legally and ethically, by reporting campaign violations of rogue officers. The FEC, with its limited resources as acknowledged in the Tsongas matter, must rely on the campaign committees to police themselves. It is not in the Commission's interest to punish those who

report the violator. In virtually every case discussed supra, it was the successor treasurer who reported the campaign violations. By punishing the successor treasurer and the committees, the Commission only invites more unreported misconduct. Treasurers will not report violations by rogue officers for fear that they themselves will be held liable. As such, the Commission should not pursue the Enid committees and Enid Greene, as successor treasurer; rather, the Commission should pursue action against the true self-admitted miscreant in this case, Joseph P. Waldholtz.

### B. The Enid Committees and Enid Greene, As Treasurer, Are Not Liable for FECA Violations Committed by Joseph P. Waldholtz as a Matter of Law.

For two legal reasons, the Enid committees and Enid Greene, as treasurer, are not liable for the criminal actions of Joseph P. Waldholtz. First, Joseph P. Waldholtz, though an agent of the Enid committees, was not acting within the scope of his employment. Second, throughout his tenure as treasurer of the Enid committees, Joseph P. Waldholtz became the "alter ego" of the committees, using their bank accounts as if they were his own.

#### 1. Joseph P. Waldholtz Was Not Acting Within The Scope of His Employment And Authority as an Agent of the Committee When He Committed the FECA Violations at Issue in These Matters.

The General Counsel appears to base its legal conclusion that the Enid committees and Enid Greene, as treasurer, may be held liable for the FECA violations committed by Joseph P. Waldholtz on an incorrect application of the law of agency. The Enid committees do not dispute that Joseph P. Waldholtz was, in general terms, an "agent" of the Enid committees. Commission regulations define an "agent" as:

> [A]ny person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

11 C.F.R. § 109.1(b)(5).

Generally, when a principal, such as the Enid committees, grants an agent, such as Joseph P. Waldholtz, express or implied authority, the principal is responsible for the agent's acts *within the scope of his authority*. Weeks v. United States, 245 U.S. 618, 623 (1918) (emphasis added). The legal question that requires analysis, therefore, is whether Joseph P. Waldholtz was acting within the scope of his employment when he defrauded D. Forrest Greene of millions of dollars, when he used campaign accounts as his own for his own personal expenses, and when he illegally funneled the money from D. Forrest Greene into Enid '94.

The Restatement (Second) of Agency, § 228(1), states that an agent is acting within his scope of employment if:

> (a) it is of the kind he is employed to perform;
> (b) it occurs substantially within the authorized time and space limits; and,
> (c) it is actuated, at least in part, by a purpose to serve the master.

The section further states that, "[c]onduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master." Restatement (Second) of Agency, § 228(2).

Section 231 of the Restatement explores criminal or tortious acts committed by the agent. The Comment to Section 231 is especially instructive:

> The fact that the servant intends a crime, especially if the crime is of some magnitude, is considered in determining whether or not the act is within the employment, since the master is not responsible for acts which are clearly inappropriate to or unforeseeable in the accomplishment of the authorized result. The master can reasonably anticipate that servants may commit minor crimes in the prosecution of the business, but serious crimes are not only unexpectable but in general are in nature different from what servants in a lawful occupation are expected to do.

Restatement (Second) of Agency, § 231, Comment (a) (emphasis added).

Section 235 of the Restatement, which is entitled "Conduct Not For Purpose Of Serving Master" states, "[a]n act of the servant is not within the scope of employment if it is done with no

intention to perform it as a part of or incident to a service on which account he is employed." The Comment to the section indicates, "[t]he rule stated in this section applies although the servant would be authorized to do the very act done if it were done for the purpose of serving the master, and although outwardly the act appears to be done on the master's account, it is the state of the servant's mind which is material." Restatement (Second) of Agency, § 235, Comment (a) (emphasis added).

The next step in the analysis is to look at Joseph P. Waldholtz's state of mind. Because it is in the nature of Joseph P. Waldholtz to be in the "spotlight" and to enjoy the attention focused on him, the Commission has the benefit of reviewing his many statements and of actually reviewing evidence of his state of mind.

Joseph P. Waldholtz's first public statements in this regard occurred at his sentencing on November 7, 1996. He emphatically stated, "I would like to express my deepest regret and sorrow for my actions. My behavior was deplorable. *And I alone am responsible....* It is my responsibility and my responsibility alone." Partial Transcript of Sentencing Proceedings at 1B-2. (Exhibit G). Clearly, these are not the statements of a man who was acting at the direction of the intended victims of his crimes – Enid Greene and the Enid committees. Joseph P. Waldholtz acted alone. *He acted in his interest and in his interest alone*, as he had so many times in his past.

He made further statements during prison interviews while he was in custody at Allenwood Federal Prison Camp serving his thirty-seven (37) month sentence for election, bank and tax fraud. According to one of the resulting articles, Joseph P. Waldholtz, while treasurer of the Enid committees, recognized that "they would need more money than Enid could or would raise well before the 1994 election, and that's when he started his periodic calls to Enid's

wealthy father, Forrest Greene, for 'loans' that he then funneled into their campaign." Javers, *Joe Waldholtz in Prison: Slimmer, Sober and Penitent*, The Hill, June 10, 1998, at 36, col. 1 (emphasis added). (Exhibit H).

The key word is "their" campaign. Although this was Enid Greene's campaign to become a United States Representative, Joseph P. Waldholtz saw this as "his" campaign. In order to analyze the question of agency, as the Restatement indicates, it is necessary to explore the agent's state of mind. To do that, the Commission must explore his mind and his actions, not just in 1994, but in the years leading up to 1994 and 1995, to understand how Joseph P. Waldholtz arrived at that point.

When Enid Greene met Joseph P. Waldholtz, he presented himself as a person with unlimited wealth. He was well known in political circles. He wore expensive clothing; he had wealthy friends; and, he commonly picked up the tab when out on the town with others. In effect, Joseph P. Waldholtz was the picture of "a political mover and a shaker."

He had spent his entire adult life in political fundraising, at both the state and national levels. He had served as the chief of staff for Elsie Hillman, a member of the Republican National Committee, ran the Pennsylvania Bush/Quayle '92 campaign, and after meeting Ms. Greene, served as the executive director of the Utah Republican Party. Enid Greene Dep. At 39-40, 42, 69-70, 73. Joseph P. Waldholtz saw the promise in Enid Greene that others saw in her – a young female leader to help move the Republican Party in a new direction. But Joseph P. Waldholtz saw more. He saw an opportunity. Enid Greene became Joseph P. Waldholtz's way to "bigger and better things." She was his ticket to Washington, D.C., nirvana for political wannabe's. Joseph P. Waldholtz wanted to be a player in the major leagues of American politics and Enid Greene was his ticket.

Eventually, in August 1993, they married. On their wedding day, Joseph P. Waldholtz enthusiastically informed Enid that he had given her a $5 million gift as a wedding present. Did he have the money? No. Did the $5 million trust exist? No. Why would he do this? He had built a facade and he needed to maintain the picture. With the encouragement of Joseph P. Waldholtz and with her newly found financial backing, Enid Greene began contemplating that which she had previously written off – another attempt at national office. Ms. Greene had previously run for Congress in 1992 and lost. In 1993, with the enthusiastic prompting of her new husband, Joseph P. Waldholtz, she decided to make another attempt.

Upon forming her committee and structuring her campaign, Enid Greene chose her husband, Joseph P. Waldholtz, as her treasurer. Why? Because she loved and trusted him. Because he had run federal campaigns previously. Because he was familiar with federal election laws. He seemed to be the natural choice. Why? Because Joseph P. Waldholtz had placed himself in that position by continuing his facade. Joseph P. Waldholtz had many deficiencies, but one controlling deficiency was his lack of self-respect, his belief that he had to be someone other than he was in order to achieve acceptance and approval.

Joseph P. Waldholtz took the job as treasurer with enthusiasm. He was going to propel Enid Greene to national attention. He was going to be the power source behind the campaign. He was going to get her elected. What was his state of mind? He wanted the attention and access that her success would bring him.

At the time he became the treasurer, Joseph P. Waldholtz knew what others did not: that he and Enid '94 did not have the resources to run the type of campaign that he envisioned. Joseph P. Waldholtz needed a great deal of money to continue his charade or he would never attain his goal of attaining political power. He also knew that he had prior debts that demanded

his attention; that he had an expensive lifestyle to maintain; and that he needed to continue to conceal prior frauds he had committed against immediate family members in Pittsburgh, Pennsylvania, by sending them money from the "investments" he had made for them. Joseph P. Waldholtz approached the one person whom he knew could supply the amounts of cash that he and Enid '94 needed, and whom he knew would never let down his loved ones. Joseph P. Waldholtz went to D. Forrest Greene, Enid's father.

As in the past, Joseph P. Waldholtz chose a wealthy, elderly person as his target. Joseph P. Waldholtz had previously victimized his own mother, Barbara Waldholtz, and his grandmother, Rebecca Levenson. He had defrauded his mother out of approximately $100,000, her entire life savings, by convincing her to take out a mortgage on the home she owned free and clear and giving him the money to "invest" on her behalf. And he defrauded his grandmother out of at least $400,000 by convincing her to allow him to "invest" her money in non-existent Ginnie Mae securities. Instead of investing the money for them, as he had claimed he would, he used the funds to perpetuate his fraud. But, to evade discovery, he needed to send his family money from these fictitious investments.

Accordingly, while he served as treasurer of the Enid committees, Joseph P. Waldholtz was in a constant struggle to prevent his prior victims from discovering his treachery. On March 31, 1994, Joseph P. Waldholtz wired $3,000 from Enid '94 to Barbara Waldholtz's bank account in Pittsburgh, Pennsylvania so that there would be enough money in her account to meet that month's mortgage payment. Complaint at ¶ 45. On May 25, 1995, he wired $2,000 from Enid '96 to Rebecca Levenson's bank account in Pittsburgh, Pennsylvania so other family members would not discover that he had looted her assets. Complaint at ¶ 47. Joseph P. Waldholtz's management of the Enid committees' bank accounts was a constant exercise in "robbing Peter to

pay Paul," embezzling funds from the Enid committees to prevent discovery of his earlier crimes, all to further his personal goal of enhancing his reputation as a political kingmaker.

Throughout 1994 and well into 1995, Joseph P. Waldholtz obtained a series of loans from D. Forrest Greene under the pretext of needing the money to cope with financial setbacks caused by his mother. Joseph P. Waldholtz used these funds for an entirely different purpose: to maintain the illusion of personal wealth and to secretly fund the Enid '94 campaign. He continued buying expensive clothing; he continued to pay for lavish dining out and lengthy bar tabs; and he continued to let Enid believe that she was funding the 1994 campaign with her own, lawful money. Most importantly, as mentioned above, Joseph P. Waldholtz used the money for his own personal benefit to cover his prior criminal actions in regards to the frauds committed against his own mother and grandmother.

Joseph P. Waldholtz also consistently deposited the money from D. Forrest Greene into the Enid committees. The steady infusions of cash into Enid '94 from January through the middle of August 1994, were done without Enid's knowledge. The cash transfers of which Enid was aware, she believed were from the proceeds of a legitimate asset swap between herself and her father, using a piece of marital property that Joseph P. Waldholtz assured her was legitimate. Ultimately, like the money that Joseph P. Waldholtz embezzled for his own personal gain, these cash infusions into the Enid committees were for the benefit of Joseph P. Waldholtz. As twisted as that argument sounds, it is as twisted as Joseph P. Waldholtz's psyche was. His life was a lie, spinning out of control. The only way he could control that lie was to attempt to *continue* it. Eventually, on November 11, 1995, his house of cards crumbled, and with it, the lives of Enid Greene and their baby daughter.

Generally, the knowledge of the agent is imputed to the principal. However, the law recognizes an "adverse interest exception" to this general principle. This "exception" is discussed in 3 Am. Jur. 2d (Agency), § 290:

> Where the conduct and dealings of an agent are such as to raise a clear presumption that he will not communicate to the principal the facts in controversy, as where the agent acting nominally as such is in reality acting in his own business or for his own personal interest and adversely to the principal, or is acting fraudulently against the interests of the principal, or for any other reason has a motive or interest in concealing the facts from his principal, then contrary to the general rule, the knowledge of the agent is not imputed to the principal.

3 Am. Jur. 2d (Agency), § 290 at 794 (Law. Co-op. 1986) (emphasis added) (citations omitted).

The treatise further states:

> This is the case where the agent is engaged in committing an independent fraudulent act on his own account and the facts to be imputed relate to this fraudulent act so that the communication of such facts to the principal would necessarily prevent the consummation of the fraud....This rule also applies where the agent is engaged in prosecuting some fraudulent or illegal enterprise the success of which would be impaired or defeated by the disclosure to his principal of the notice or knowledge sought to be imputed. In all such cases, it is obvious that the agent will not communicate the true facts to the principal and there is no latitude for any presumption that he will.

Id. at 795 (citations omitted).

It is clear that Joseph P. Waldholtz, as husband and as treasurer, did not communicate his fraud to Enid Greene or to the Enid committees. As soon as Enid became aware of the misdeeds of Joseph P. Waldholtz, she did everything she could to correct his criminal actions. She immediately fired Joseph P. Waldholtz from his position as treasurer; she notified law enforcement authorities; she notified the FEC; she hired Coopers & Lybrand at a great, personal cost to reconstruct the Enid committee records and to correct previously filed FEC reports; she hired attorneys to assist the accountants; and finally, she became treasurer of her committees. At a great, personal, emotional, cost to Enid Greene and her family, her devastated private life became public.

The test for principal liability, according to principles of agency law, is whether Joseph P. Waldholtz was acting within the scope of his employment when he committed his criminal fraud – whether the purpose of his actions was to benefit the employer and *not* necessarily whether there was in fact some incidental benefit to the employer. See, e.g., Standard Oil Co. of Texas v. United States, 307 F.2d 120, 128 (5th Cir. 1962) (where agent's fraudulent acts in violation of 15 U.S.C. § 715 et seq. were not intended to benefit defendant corporation, those acts were not imputable to corporation; conviction reversed and judgment rendered in favor of corporation). The record here shows that Joseph P. Waldholtz's actions were intended to benefit him personally, both financially and psychologically, and he acted outside the scope of his employment when he carried out his various criminal schemes. Accordingly, the Enid committees and Enid Greene, as treasurer, may not be held responsible for his actions.

**2. Joseph P. Waldholtz So Completely Dominated the Enid Committees That He Became Their Alter Ego and, as Such, He is Personally *Responsible for the* FECA Violations That He Committed While Treasurer of the Enid Committees.**

In analyzing the potential liability of the Enid committees, it is instructive to review cases involving the piercing of the corporate veil. See, e.g., Fidenas AG v. Honeywell, 501 F.Supp. 1029, 1037 (S.D. NY 1980) ("The tests for finding agency so as to hold a parent corporation liable for the obligations of its subsidiary, however, are virtually the same as those for piercing the corporate veil.").

Essentially, Joseph P. Waldholtz was a rogue officer in an unincorporated association. Joseph P. Waldholtz, as treasurer of the Enid committees, so thoroughly controlled the committees that he became their alter ego. It is appropriate to look past the unincorporated association form of the Enid committees to impose liability solely on Joseph P. Waldholtz. "[T]he equitable tool of piercing the corporate veil on the basis of the alter ego theory is

appropriately utilized 'when the court must prevent fraud, illegality, or injustice, or when recognition of the corporate entity would defeat public policy or shield someone from liability for a crime.'" May Bell Schmid v. Roehm GmbH, 544 F.Supp. 272, 275 (D. Kan. 1982) (citations omitted) (emphasis added). "The corporate veil will be pierced only when the corporate 'form has been used to achieve fraud, or when the corporation has been so dominated by an individual or another corporation...and its separate identity so disregarded, that it primarily transacted the dominator's business rather than its own and can be called the other's alter ego.'" Costamar Shipping Co. v. Kim-Sail Ltd., 1995 U.S. Dist. LEXIS 18430 at 7 (December 12, 1995) (citations omitted) (emphasis added).

Courts look to several factors in determining whether to pierce the corporate veil, including the intermingling of corporate and personal funds, undercapitalization of the corporation, failure to observe corporate formalities including the maintenance of books and records, failure to pay dividends, insolvency at the time of a transaction, siphoning off of funds, and the inactivity of other officers and directors. Id. (citing William Wrigley Jr. Co. v. Waters, 890 F.2d 594, 600-01 (2nd Cir. 1989) (collecting cases)). "Although there is no set rule as to how many of these factors must be present to pierce the corporate veil, the 'general principle followed by the courts has been that liability is imposed when doing so would achieve an equitable result.'" Id. (citing William Wrigley Jr. Co. v. Waters, 890 F.2d 594, 601 (2nd Cir. 1989) (emphasis added)). Certainly, not all of the factors listed above are directly applicable to the case of the Enid committees and the actions of Joseph P. Waldholtz. However, the factors are instructive.

First, Joseph P. Waldholtz regularly commingled Enid committee funds with his personal accounts. Indeed, Joseph P. Waldholtz essentially used Enid committee bank accounts

interchangeably with his own personal accounts. He paid his credit card bills with Enid committee funds; he wired money from the Enid committees' bank accounts to the bank accounts of his mother and grandmother in order to prevent them from discovering his prior crimes; he transferred money he obtained by fraud from D. Forrest Greene in and out of the Enid committees' bank accounts and used a portion of those funds to maintain his high standard of living. Second, because of his actions, the Enid committees were undercapitalized, which ultimately led to Joseph P. Waldholtz defrauding millions of dollars from D. Forrest Greene. Third, Joseph P. Waldholtz deliberately failed to observe FEC formalities, such as the proper maintenance of books and records, so that he could continue to cover up his crimes. It is the actions of Joseph P. Waldholtz alone that have led to the FEC investigation. He regularly misrepresented the Enid committees' finances and Enid Greene's finances in reports both to the FEC and to the United States Congress. Fourth, it is the actions of Joseph P. Waldholtz alone that led to the insolvency of both Enid '94 and Enid '96. Fifth, Joseph P. Waldholtz siphoned funds from the Committees for his own personal expenses. And sixth, despite Enid Greene's efforts to have outside FEC experts, Huckaby & Associates, supervise Joseph P. Waldholtz's actions, he operated the Enid committees with no effective supervision. The specialists at Huckaby & Associates simply accepted the word of Joseph P. Waldholtz with regard to any proposed FEC filings. Joseph P. Waldholtz functioned as an "unchecked" entity.

"Courts nationwide generally subscribe to the same bottom line: those who commingle corporate assets, take actions to hinder or defraud creditors, disregard corporate formalities, directly engage in tortious conduct (or direct their company to do so), or otherwise abuse the corporate form for an unethical or illegal purpose, will pierce the corporate veil which otherwise

insulates them from personal liability." Chemtall, Inc. v. Citi-Chem, Inc., 992 F. Supp. 1390. 1402 (S.D. GA 1998) (citations omitted) (emphasis added).

In Geringer v. Wildhorn Ranch, Inc. et al, a wrongful death action, the District Court of Colorado held that the Wildhorn Ranch was actually the alter ego of M.R. Watters ("Watters"), the "owner" of the Ranch, and the court imposed liability on Watters. 706 F.Supp. 1442 (D.Co. 1988). The court looked to similar factors mentioned above. Wildhorn Ranch is a guest ranch located in Teller County, Colorado. The Geringers, a family of four, vacationed there in the summer of 1986. During their stay, William Geringer and his son, Jared, rented a paddleboat, while Diane Geringer and their daughter, Tara, rented another paddleboat. Diane and Tara Geringer later watched as William and Jared Geringer drowned after their paddleboat began sinking while taking on water.

The Geringer Court held that Watters could not hide behind the corporate shell of Wildhorn Ranch in order to avoid liability. The court found that Watters consistently engaged in a course of conduct by which he ignored the existence of the corporate entity; that he conducted business as an individual by exercising such paramount and personal control over the operations of the corporation that the corporate existence had been disregarded and his business interests and own personal interests could not be reasonably separated; and that his domination of the corporation caused injury to the plaintiffs so that to continue to recognize the existence of the separate corporate entity would promote injustice. Id. at 1448 (emphasis added). The court pointed to factors such as Watters' payments of debts by funds from another corporation or from his own personal funds, depending on the financial condition of the various entities when the debt came due. Additionally, Watters failed to keep records of loans and was unable to produce certain required ledgers. Id. at 1449.

The Tenth Circuit has also held that "in order to establish as a matter of law that the corporate veil should be pierced and that an individual should be held liable for actions that were carried out in the name of the corporation, it must appear that the corporation was being misused in some manner. For example, that its funds were being diverted or a fraud, constructive or express, was being carried out." Trustees of The Colorado Cement Masons Apprentice Trust Fund, et al. v. Burton Levy, et al., No. 78-1057 and 78-1058, at 7) (10th Cir., August 17, 1979) (unpublished) (as cited in May Bell Schmid v. Roehm GmbH, 544 F.Supp. 272, 275 (D. Kan. 1982)).

Clearly, the Enid committees and Enid Greene, as treasurer, should not be held liable for the rogue actions of Joseph P. Waldholtz. He acted in his own self-interest. He was not following the directions of Enid Greene, and the Enid committees certainly did not benefit from his actions. He clearly abused his position as treasurer of the Enid committees for his own personal benefit. He and he alone should be held accountable for the actions he took in the name of the Enid committees.

The General Counsel takes the simplistic view that the Enid committees benefited from the actions of Joseph P. Waldholtz because the Enid committees received a large portion of the $4 million that Joseph P. Waldholtz obtained by fraud from D. Forrest Greene. However, it is Joseph P. Waldholtz's criminal actions that led to the *demise* of the Enid committees and to the *end* of Enid Greene's promising political career. Certainly, there was no true benefit here to anyone other than Joseph P. Waldholtz, who received the national attention and media limelight that he always craved, no matter the form.

**C. The Committees, and Enid Greene, As Treasurer, Were Victims Of Joseph P. Waldholtz's Criminal Actions And It Would Be Fundamentally Unfair For The Commission To Impose Any Liability Upon The Committees, or Enid Greene, As Treasurer.**

Enid Greene, as successor treasurer, did everything the Commission could expect a candidate to do once she discovered the criminal misdeeds of the treasurer of the Enid committees, Joseph P. Waldholtz. When Joseph P. Waldholtz abandoned his wife and ten (10) week old daughter to evade a Department of Justice probe, Ms. Greene immediately fired him from his position as treasurer; she notified the FEC; she notified the FBI; she notified local law enforcement; and, at a cost of more than $150,000, she hired nationally-renowned accountants to reconstruct the Enid committee records and file corrected reports with the FEC so that the fundamental disclosure goal of FECA would be satisfied. To *punish* her for doing the *right* things reaches an *absurd* result.

As a practical matter, taking further action against the Enid committees or Enid Greene, as treasurer, would be a fruitless waste of the Commission's preciously scarce resources, as noted above in the Tsongas matter. Enid '94 and Enid '96 are *more* than deeply in debt for the attorneys' and accountants' fees made necessary by Joseph P. Waldholtz's criminal actions. In calendar year 1997, Enid '94 received no contributions from individuals and has received no individual contributions in 1998. Enid '96 received $50 in individual contributions in calendar year 1997, but no individual contributions thus far in 1998.

Moreover, the candidate, Enid Greene, the only individual who could conceivably raise funds for the Committees, is in no position to do so. Ms. Greene liquidated virtually all of her remaining personal assets (those that had not already been stolen by Joseph P. Waldholtz) in 1996, including selling her home in Salt Lake City, in order to pay the legal and accounting fees

the Enid committees incurred for successfully fending off the government's criminal investigation and correcting the Enid committees' FEC reports. These are all expenses that would not have been incurred but for Joseph P. Waldholtz's criminal activities. Until very recently, Ms. Greene has been an unemployed single mother, having received a final decree of divorce from Joseph P. Waldholtz in August 1996. She has no assets from which the Commission could make any recovery.

It would be fundamentally unfair to hold the Enid committees liable for the actions of a rogue officer, Joseph P. Waldholtz. Ms. Greene holds no federal office and is not a candidate for federal office. There will be no deterrent effect served for the simple reason that Enid Greene and the Enid committees were not responsible for Joseph P. Waldholtz's criminal actions. The true criminal, Joseph P. Waldholtz, has been prosecuted and convicted. The true victim, D. Forrest Greene, has a court judgment against Joseph P. Waldholtz. Enid Greene is attempting to move on with her life and to raise her young daughter. It is time for the FEC to use its resources productively, by pursuing the true responsible party: Joseph P. Waldholtz.

## IV. CONCLUSION

For all of the above reasons and those set forth in our previous responses, the Commission should reject the General Counsel's recommendation that there is probable cause to believe that the Enid committees and Enid Greene, as treasurer, violated any provision of FECA. We respectfully request the Commission take no further action and close its file in this matter.

Respectfully submitted,

Charles H. Roistacher

Brett G. Kappel

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Counsel to Enid '94 and Enid Greene, as Treasurer
Counsel to Enid '96 and Enid Greene, as Treasurer

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding A Criminal Term

Grand Jury Sworn In On October 7, 1994

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | : | Criminal No.: 96-0143 |
| | : | |
| | : | Grand Jury Original |
| v. | : | |
| | : | Violations: |
| JOSEPH P. WALDHOLTZ, | : | 18 U.S.C. § 1344 |
| Defendant. | : | (Bank Fraud) |
| | : | 18 U.S.C. § 2 |
| | : | (Aiding and Abetting) |
| | : | 18 U.S.C. § 982(a)(2) and |
| | : | (b)(1()B) |
| | : | (Criminal Forfeiture) |

**INDICTMENT**

FILED IN OPEN COURT

MAY - 2 1996

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

The Grand Jury Charges:

**COUNTS ONE THROUGH TWENTY-SEVEN**

Introduction

1. At all times material herein:

A) The defendant **JOSEPH P. WALDHOLTZ** was the husband of Enid Greene Waldholtz, the elected Congressional Representative of the Second Congressional District of the state of Utah. JOSEPH P. WALDHOLTZ worked full-time in Representative Waldholtz's Congressional office, but received no salary. Joseph and Enid Waldholtz were legal residents of the state of Utah, but also had a residence in the District of Columbia, where they lived while Representative Waldholtz was serving in Congress.

B) The defendant **JOSEPH P. WALDHOLTZ** and his wife, Enid Greene Waldholtz, maintained joint checking accounts at the Wright Patman Congressional Federal Credit Union (hereinafter sometimes referred to as "CFCU"), located in Washington, D.C., and at First Security Bank of Utah (hereinafter sometimes referred to as "FSB"), located in Salt Lake City, Utah.

C) The Congressional Federal Credit Union and First Security Bank of Utah were financial institutions as defined by Title 18 U.S.C. § 20.

The Congressional Federal Credit Union/
First Security Bank Check Kite

2. Beginning on or about January 1995 and continuing up to on or about March 3, 1995, the defendant **JOSEPH P. WALDHOLTZ** devised a scheme and artifice to defraud the Congressional Federal Credit Union and First Security Bank by executing a check kiting scheme whereby he made cross deposits into Account Number 106413 at CFCU and into Account Number 051-10075-51 at FSB, making it appear that there were substantial balances in both accounts. In fact, as the defendant **JOSEPH P. WALDHOLTZ** knew, the actual balances in the accounts were negligible or negative.

3. A standard general practice applied by financial institutions concerning deposits and access to deposited funds is as follows: When an account holder deposits a check into his account at a bank, that bank sends the actual check, by United States mail or other means, to the bank upon which the check was drawn. The bank upon which the check was drawn then determines if the person who wrote the check has sufficient funds in his account

to pay the check. If he does, the bank upon which the check was drawn pays the check by sending the money to the bank into which the check was deposited as a credit. Once the bank has received the deposited funds from the bank upon which the check was drawn, then the customer who deposited the check is permitted to use the money. There is usually a delay of several days between the time that a check is deposited and the time that the customer is given access to the funds.

4. In contrast to the general banking practices described in the proceeding paragraph, it was the practice of the CFCU and FSB, in certain circumstances, to give a customer immediate credit for his deposited check. That is, the customer would be allowed to write checks based on the deposit immediately, without waiting for the deposited check to be sent to the bank upon which it was drawn and without waiting for that bank to determine whether the account had sufficient funds to cover the amount of the check. When this was done, the bank allowed the customer the temporary use of its own money expecting the deposited check to be paid. This practice is referred to as paying a check against uncollected funds.

5. It was the policy of CFCU to pay checks drawn on uncollected funds checks deposited into the customer's account.

6. It was the policy of FSB to pay checks drawn on uncollected funds checks in cases in which a bank officer approved the payment of such checks.

7. As part of the scheme and artifice to defraud, the defendant **JOSEPH P. WALDHOLTZ** made numerous misrepresentations to

FSB regarding the source and availability of funds to which he claimed to have access, thereby causing FSB to pay checks based on uncollected funds. For example, **JOSEPH P. WALDHOLTZ** repeatedly promised large transfers of funds into his FSB account from a trust, supposedly with a value of millions of dollars, located in Pittsburgh, Pennsylvania when, in fact, as **JOSEPH P. WALDHOLTZ** knew, no such trust existed.

8. It was a part of the scheme and artifice to defraud that the defendant **JOSEPH P. WALDHOLTZ** used his knowledge of the practice of CFCU and FSB of giving him immediate credit for his deposits to carry out a check kiting scheme.

9. It was a part of the said scheme and artifice to defraud that:

A) **JOSEPH P. WALDHOLTZ** would write checks on his account at FSB knowing that he did not have sufficient funds to cover them;

B) **JOSEPH P. WALDHOLTZ** then deposited these checks at CFCU where he knew he would get immediate credit in his CFCU account;

C) As a result **JOSEPH P. WALDHOLTZ'S** CFCU account balances would reflect more money than was actually available;

D) **JOSEPH P. WALDHOLTZ** then would write checks on his CFCU accounts knowing that he did not have sufficient money to cover them, since his account balance was artificially inflated by deposits of insufficient funds checks from FSB.

10. It was a further part of the said scheme and artifice to defraud that **JOSEPH P. WALDHOLTZ**, through the exchange of worthless

checks back and forth between the CFCU and FSB, did artificially inflate the balances in the accounts and obtain the use of monies, funds and credits to which he was not entitled. At the height of the scheme, the defendant's accounts at CFCU and FSB showed a combined apparent positive balance of approximately $752,000, while the two accounts in fact had a combined negative balance of approximately $197,000.

11. During the course of this check kiting scheme, **JOSEPH P. WALDHOLTZ** wrote approximately $1,445,000 worth of worthless checks drawn on his account at FSB which he deposited into his account at CFCU. Similarly, the defendant wrote approximately $1,515,000 worth of worthless checks drawn on his account at CFCU which he deposited into his account at FSB. During the scheme, **JOSEPH P. WALDHOLTZ** did not any make any deposits into the accounts which reflected money legitimately available to him.

12. During the course of this check kiting scheme, the defendant wrote checks drawn on his CFCU account to parties other than FSB worth approximately $66,000. These checks were paid by CFCU. During the course of this check kiting scheme, the defendant also wrote checks drawn on his FSB account to parties other than CFCU worth approximately $141,000. These checks were paid by FSB. But for the defendant's scheme to defraud, CFCU and FSB would not have paid these checks.

13. On or about March 2, 1995, CFCU and FSB discovered the defendant's check kiting scheme and CFCU froze the defendant's checking account. After CFCU and FSB reviewed the defendant's

accounts and exchanged certain of the defendant's checks, the banks determined that the result was that Waldholtz's account at FSB had an overdraft of approximately $209,000.

14. On or about the dates listed below, within the District of Columbia, the defendant **JOSEPH P. WALDHOLTZ** for the purpose of executing and attempting to execute the scheme and artifice to defraud both banks as set forth in paragraphs one through twelve above, did knowingly deposit, and caused to be deposited, checks into CFCU and FSB, in the amounts listed below, drawn on the Waldholtz accounts at CFCU and FSB.

| Count | Date | Source | Deposited | Total Value |
|---|---|---|---|---|
| One | 2/3/95 | CFCU Check No. 101 | FSB | $ 10,000.00 |
| Two | 2/3/95 | FSB Check No. 732 | CFCU | $ 10,000.00 |
| Three | 2/6/95 | FSB Check Nos. 751, 752, 753 | CFCU | $ 30,000.00 |
| Four | 2/7/95 | CFCU Check No. 102 | FSB | $ 20,000.00 |
| Five | 2/8/95 | FSB Check No. 776 | CFCU | $ 25,000.00 |
| Six | 2/9/95 | CFCU Check No. 103 | FSB | $ 50,000.00 |
| Seven | 2/10/95 | FSB Check No. 778 | CFCU | $ 65,000.00 |
| Eight | 2/13/95 | CFCU Check No. 104 | FSB | $ 65,000.00 |
| Nine | 2/14/95 | FSB Check Nos. 781, 782, 783, 784 | CFCU | $ 85,000.00 |
| Ten | 2/15/95 | CFCU Check No. 106 | FSB | $100,000.00 |
| Eleven | 2/16/95 | CFCU Check No. 108 | FSB | $ 50,000.00 |
| Twelve | 2/16/95 | FSB Check No. 793 | CFCU | $100,000.00 |
| Thirteen | 2/17/95 | CFCU Check No. 110 | FSB | $ 50,000.00 |
| Fourteen | 2/21/95 | CFCU Check No. 112 | FSB | $150,000.00 |
| Fifteen | 2/21/95 | FSB Check No. 801 | CFCU | $100,000.00 |
| Sixteen | 2/22/95 | CFCU Check No. 113 | FSB | $100,000.00 |
| Seventeen | 2/22/95 | FSB Check No. 806 | CFCU | $100,000.00 |
| Eighteen | 2/23/95 | FSB Check No. 808 | CFCU | $150,000.00 |
| Nineteen | 2/24/95 | CFCU Check No. 114 | FSB | $150,000.00 |
| Twenty | 2/24/95 | FSB Check No. 809 | CFCU | $150,000.00 |
| Twenty-one | 2/27/95 | CFCU Check Nos. 116, 117 | FSB | $250,000.00 |
| Twenty-two | 2/27/95 | FSB Check No. 826 | CFCU | $150,000.00 |
| Twenty-three | 2/28/95 | CFCU Check Nos. 127, 128 | FSB | $200,000.00 |
| Twenty-four | 2/28/95 | FSB Check No. 830 | CFCU | $150,000.00 |

| | | | | |
|---|---|---|---|---|
| Twenty-five | 3/1/95 | CFCU Check No. 120 | FSB | $250,000.00 |
| Twenty-six | 3/1/95 | FSB Check No. 814 | CFCU | $150,000.00 |
| Twenty-seven | 3/2/95 | FSB Check No. 832 | CFCU | $250,000.00 |
| | | | **TOTAL** | **$2,960,000** |

(In violation of 18 United States Code, Sections 1344 and 2)
(Bank Fraud and Aiding and Abetting)

FORFEITURE ALLEGATION

1. The allegations of Paragraphs One through Fourteen of this indictment are realleged and by this reference are fully incorporated herein for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18 U.S.C. § 982 (a)(2).

2. As a result of the offenses alleged in Counts One through Twenty-Seven, the defendant, ***JOSEPH P. WALDHOLTZ*** shall forfeit to the United States all property constituting, or derived from, proceeds the defendant obtained directly or indirectly, as a result of such offenses, including but not limited to:

a. $209,000 in United States currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property which was property constituting, or derived from, proceeds obtained directly or indirectly as a result of the bank frauds in violation of 18 U.S.C. §§ 1344, and 982.

b. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, U.S.C. Code 982(b)(1)(B) to seek forfeiture of any other property of said defendant up to the value of the above forfeiture property.

(In violation of Title 18 United States Code, Section 982(a)(2) and (b)(1)(B)) (Criminal Forfeiture)

A TRUE BILL:

FOREPERSON

Eric H. Holder, Jr.

ATTORNEY OF THE UNITED STATES IN AND FOR THE DISTRICT OF COLUMBIA

U.S. Department of Justice

United States Attorney

*District of Columbia*

*Judiciary Center*
*555 Fourth St. N.W.*
*Washington, DC 20001*

FILE (B) COPY

May 29, 1996

Pamela Bethel, Esquire
Barbara Nicastro, Esquire
Bethel & Nicastro
2021 L Street, N.W.
Suite 300
Washington, DC 20036

**Re: Joseph P. Waldholtz, Cr. Case No. 96-143 (NHJ)**

Dear Ms. Bethel and Ms. Nicastro:

This letter sets forth the terms and conditions of the Plea Agreement which this Office is willing to enter into with your client, Joseph P. Waldholtz, regarding the charges in the above captioned-case and other matters presently under investigation.

1. CHARGES

Mr. Waldholtz agrees to enter a plea of guilty in the United States District Court for the District of Columbia to one count of bank fraud (18 U.S.C. § 1344) and agrees to criminal forfeiture of $14,910 (18 U.S.C. §§ 982(a)(2) and (b)(1)(8)) as charged in Count Twenty-One and in the Forfeiture Count of the Indictment returned against him in Criminal Case No. 96-143. In addition, Mr. Waldholtz agrees to plead guilty to a three-count Information charging him with one count of making a false statement (18 U.S.C. § 1001), one count of making a false report to the Federal Election Commission ("FEC") (2 U.S.C. § 437g(d) and § 441a), and one count of willfully aiding or assisting in filing a false or fraudulent tax return (26 U.S.C. § 7206(2)). The Information will be filed on a date determined by the government. Joseph Waldholtz agrees that, for the purposes of this plea, venue for all charges is properly before the United States District Court for the District of Columbia and agrees to waive any challenges to venue.

2. FACTUAL ADMISSION OF GUILT

Pursuant to Rule 11(e)(6), Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, Mr. Waldholtz agrees to state under oath that the following statement of his actions is true and accurate. The government agrees that the following facts constitute all of the relevant facts of conviction.

The charges set forth in Section 1, above, arise from the following facts:

a. Bank Fraud

1. Offense of Conviction

Mr. Waldholtz pleads guilty to Count Twenty-One of the Indictment and admits that, as part of a scheme and artifice to defraud, on or about February 27, 1995, he deposited into a checking account at the First Security Bank of Utah ("First Security") two checks, numbered 116 and 117, drawn on a checking account at the Wright Patman Congressional Federal Credit Union ("CFCU") in the total amount of $250,000, knowing that there were not sufficient funds in the CFCU account to pay those checks and intending to create the erroneous appearance that sufficient funds were available.

2. Relevant Conduct

From late January of 1995 through early March of 1995, Joseph Waldholtz engaged in a scheme and artifice to defraud First Security and CFCU through "check kiting" between joint checking accounts that he and his wife, Enid Greene Waldholtz, had at First Security (Account No. 051-1075-51) and CFCU (Account No. 106413). He began carrying out this scheme on February 3, 1995, by depositing into the First Security account a check for $10,000 drawn on the CFCU account and depositing into the CFCU account a check for $10,000 drawn on the First Security account. At the time he wrote those checks and made those deposits, Joseph Waldholtz knew that there were not sufficient funds in either account to cover the amounts of the checks.

Mr. Waldholtz continued to make cross deposits into the two accounts in order to make it appear that there were substantial balances in both accounts when, in fact, the actual balances were negligible or negative. In addition, Mr. Waldholtz wrote checks on both accounts to third parties. First Security and CFCU paid those checks because Mr. Waldholtz's actions made it appear that the accounts had sufficient balances to pay the checks. Between February 3, 1995 and March 2, 1995, First Security paid checks to third parties totaling approximately $130,000 and checks totaling approximately $11,010 to Mr. Waldholtz. During the same time

period, CFCU paid checks to third parties totaling approximately $62,000 and checks totaling approximately $3,900 to Mr. Waldholtz.

In reality, there were virtually no funds in either account to pay those checks. After CFCU and FSB discovered the check kiting scheme and exchanged certain checks, the Waldholtzs' account at First Security had a negative balance or overdraft of approximately $209,000 and the account at CFCU had no overdraft. Mr. Waldholtz covered the overdraft by depositing into the First Security account money which was provided by Enid Greene Waldholtz's father, D. Forrest Greene.

**b. False Statements and False FEC Reports**

Joseph Waldholtz was the treasurer of Enid Waldholtz's 1994 Congressional campaign committee, which was called "Enid '94" ("the Committee"). As treasurer, Mr. Waldholtz was responsible for preparing various FEC forms and reports regarding the Committee's receipts and disbursements and was responsible for certifying that the Committee's submissions were "to the best of [his] knowledge and belief . . .true, correct and complete."

On or about January 31, 1995, Mr. Waldholtz signed the 1994 Year End Report (FEC Form 3) for Enid '94 and signed the Report to certify that it was true, correct and complete. Mr. Waldholtz then caused the Report to be filed with the FEC. At the time that he signed the Report and caused it to be filed, Joseph Waldholtz knew that the Report contained a substantial number of false statements of material facts and omissions of material facts and that the Report was not true, correct or complete.

During calendar year 1994, Enid Waldholtz's father, D. Forrest Greene, had deposited approximately $2,800,000 into the personal bank accounts of Joseph and Enid Waldholtz. Joseph Waldholtz knew that during calendar year 1994 almost $1,800,000 provided by Mr. Greene was transferred from the Waldholtzs' personal accounts to Enid '94. Joseph Waldholtz also knew that neither he nor Enid Waldholtz were receiving salaries during most of 1994 and that neither he nor Enid Waldholtz had sufficient personal funds, independent of those provided by Mr. Greene, to cover the transfers to Enid '94.

Despite the fact that he knew that the funds that were transferred from the personal accounts of Joseph and Enid Waldholtz to Enid '94 had been provided by Mr. Greene, Joseph Waldholtz reported on various FEC Reports, including the 1994 Year End Report, that the transferred funds represented Enid Waldholtz's personal assets. Mr. Waldholtz made those false statements and misrepresentations because he knew that the FEC regulations that limit campaign contributions to $1,000 per

election cycle do not apply to contributions that a candidate makes with her own funds.

Mr. Waldholtz further admits that he created "ghost contributors" to Enid '94. Mr. Waldholtz willfully reported false names and addresses of alleged contributors to the Enid '94 campaign, even though he knew that the persons did not make contributions to Enid '94.

**c. Willfully Aiding or Assisting in Filing a False or Fraudulent Tax Return**

Joseph and Enid Greene Waldholtz were married in August of 1993, but decided to file separate federal tax returns for the 1993 tax year. During 1993, Enid Greene Waldholtz sold shares of securities that she owned which had appreciated in value. As a result of that appreciation, Enid Greene Waldholtz incurred and had the obligation to report a long term capital gain of approximately $39,000.

Enid Greene Waldholtz told Joseph Waldholtz that she would have to pay income tax on that capital gain and, to prevent her from having to pay the tax, Joseph Waldholtz told Enid Greene Waldholtz that he would give her stock on which he said he had incurred a long term capital loss in excess of the amount of her capital gain. Joseph Waldholtz then provided Enid Greene Waldholtz with the name of the stock that he falsely claimed to have given her and the date on which he claimed to have given the stock to her, the date that he claimed to have purchased the stock, the number of shares he claimed to have purchased, and its alleged basis.

Those figures created a phony capital loss of more than $56,000, which Enid Greene Waldholtz reported as a long term capital loss, thereby eliminating any tax liability for Enid Greene Waldholtz for the $39,000 capital gain. Joseph Waldholtz knew that he did not own the stock, that he had not and could not give the stock to Enid Greene Waldholtz, and that the basis figures were false. Joseph Waldholtz knew that Enid Waldholtz would use the false information in preparing her 1993 tax return and that the information would create a false capital loss.

3. ADDITIONAL CHARGES

If Mr. Waldholtz completely fulfills all of his obligations under this Agreement, the United States Attorney's Office for the District of Columbia agrees not to bring any additional criminal or civil charges against him for conduct regarding: (1) bank fraud or check kiting involving First Security Bank of Utah, the Wright Patman Congressional Federal Credit Union, Merrill Lynch,

Pittsburgh National Bank, or NationsBank; (2) forgery or uttering of financial instruments involving First Security, CFCU or NationsBank checking accounts or Congressional paychecks; and (3) forgery of "Ginny Mae" securities; provided that he provides full information about all such matters pursuant to Section 6 of this Agreement.

In addition, if Mr. Waldholtz completely fulfills all of his obligations under this Agreement, the United States Attorney's Office for the District of Columbia agrees not to bring any additional criminal charges against him for conduct regarding (1) false statements or violations related to any FEC reports or other reports filed by any campaign committee or other organization supporting the 1992 Congressional campaign of Enid Greene or the 1994 and 1996 Congressional campaigns of Enid Greene Waldholtz; and (2) tax violations arising from the federal tax returns filed by Joseph Waldholtz separately, or jointly with Enid Greene Waldholtz, for the tax years 1992 through 1994, or from the 1993 federal tax return of Enid Greene Waldholtz; provided that he provides full information about all such matters pursuant to Section 6 of this Agreement.

The United States also agrees to dismiss all remaining counts of the Indictment at the time of sentencing.

By entering this agreement, the United States Attorney does not compromise any civil liability, including but not limited to any tax liability or liability to or regarding the Federal Election Commission, which he may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in paragraph one of this agreement. Mr. Waldholtz agrees to cooperate with employees of the Civil Division of the Internal Revenue Service ("IRS"), the Civil Division of the United States Attorney's Office, the Federal Election Commission and law enforcement agents working with those employees, in making an assessment of his civil tax and FEC liabilities. Mr. Waldholtz specifically authorizes release to the agencies and divisions specified above of information in the possession or custody of the IRS or FEC and disclosure of matters occurring before the grand jury for purposes of making those assessments.

The United States agrees that, apart from the conduct described in Section 2 of this Agreement, there is no other conduct which the government will assert as constituting "relevant conduct" as that term is used in Section 1B1.3 of the Sentencing Guidelines for the purposes of Mr. Waldholtz's sentence.

The United States further agrees not to initiate any other civil or criminal forfeiture actions against any property which it currently knows to belong to Mr. Waldholtz or for which the government currently knows that Mr. Waldholtz is a stakeholder or

potential stakeholder. The Office of the United States Attorney for the District of Columbia further states that it is not aware of any existing criminal charges against Mr. Waldholtz or of any pending investigation in which Mr. Waldholtz is a target in any other federal judicial district. The Office of the United States Attorney further agrees to bring no additional charges for any violations or potential violations of the District of Columbia Code resulting from the above described conduct.

4. POTENTIAL PENALTIES AND ASSESSMENTS

Mr. Waldholtz understands that (1) for the felony offense of bank fraud, he may be sentenced to a statutory maximum term of imprisonment of not more than 30 years and fined not more than $1,000,000 (18 U.S.C. § 1344); (2) for the felony offense of making a false statement (18 U.S.C. § 1001), he may be sentenced to a statutory maximum of not more than five years and fined not more than $250,000 (18 U.S.C. § 3571); (3) for the misdemeanor offense of causing a false Federal Election Commission Report to be filed he may be sentenced to a term of imprisonment of not more than one year and a fine of not more than $25,000 or 300% of any contribution or expenditure involved in such violation (2 U.S.C. §§ 437g(d)(1)(A)) and 441); and (4) for the felony offense of willfully assisting in the filing of a false tax return he may be sentenced to a term of imprisonment for not more than three years and fined not more than $250,000 (26 U.S.C. § 7206(2)). Mr. Waldholtz also understands that he will lose claim of title to money and property in the amount of $14,900.

In addition, upon his release from incarceration, Mr. Waldholtz understands that he may be sentenced to a term of supervised release of not more than three years (18 U.S.C. § 3583). Pursuant to 18 U.S.C. § 3013, Mr. Waldholtz is required to pay a mandatory special assessment of $50 for each of his felony convictions and of $25 for his misdemeanor conviction. He agrees to pay this assessment at the time of sentencing. Mr. Waldholtz also may be sentenced by the court to a term of probation of not more than five years, 18 U.S.C. § 3561, and ordered to make restitution, 18 U.S.C. § 3556. The government and Mr. Waldholtz stipulate that there was no financial loss suffered by either FSB or CFCU and, therefore, agree not to ask the Court that Mr. Waldholtz be required to make restitution for the bank fraud.

Mr. Waldholtz also understands that a sentencing guideline range for his case will be determined by the Court pursuant to the provisions of the Sentencing Reform Act of 1984, see 18 U.S.C. § 3551 et seq.

In the event the Court imposes an unlawful sentence, or imposes a sentence outside the range provided by 18 U.S.C. § 3551 et seq., the parties agree that Mr. Waldholtz retains any and all

rights he may have to appeal or otherwise seek relief from any such sentence.

Mr. Waldholtz agrees that sentencing shall not take place until the government has determined that he has fulfilled his obligations under this agreement and that there is no longer a need for his cooperation. The government agrees that it will not unreasonably delay sentencing.

5. WAIVER OF CONSTITUTIONAL RIGHTS

Mr. Waldholtz understands that by pleading guilty in this case, he will be giving up the following constitutional rights: the right to be indicted by a grand jury for charges other than those in the present indictment, the right to plead not guilty, the right to a jury trial at which he would have the opportunity to present evidence, testify in his own behalf, cross-examine witnesses, and to be represented by counsel at any such trial. Mr. Waldholtz further understands that if he chose not to testify at such a trial, that fact could not be held against him. Mr. Waldholtz would also be presumed innocent until proven guilty, and the burden to do so would be on the government, which would be required to prove his guilt beyond a reasonable doubt. If Mr. Waldholtz were found guilty, he would also have the right to appeal his conviction. Mr. Waldholtz also understands that he is waiving his right to challenge the government's evidence that the property described in Count Twenty-eight of the Indictment constitutes the proceeds of specified unlawful activity as that term is used in 18 U.S.C. § 982.

6. PROVISION OF INFORMATION

Mr. Waldholtz agrees that he will cooperate completely, candidly, and truthfully with all duly-appointed investigators and attorneys of the United States, by truthfully providing all information in his possession relating directly or indirectly to all criminal activity and related matters which concern the subject matter of this investigation and of which he has knowledge. Mr. Waldholtz must provide information pursuant to this agreement whenever, and in whatever form, the United States Attorney's Office shall reasonably request. This includes, but is not limited to, submitting to interviews at such reasonable times and places as are determined by counsel for the government, providing all documents and other tangible evidence requested of him, and providing testimony before a Grand Jury or court or other tribunal. All costs of travel and expenses arising from any request by the government to provide assistance and cooperation pursuant to this paragraph will be borne by the government and not by Mr. Waldholtz.

7. INCARCERATION PENDING SENTENCING

The United States Attorney's Office waives its right to ask that Mr. Waldholtz be detained pending sentencing. The government agrees that, based upon the information currently known to it, Mr. Waldholtz poses neither a flight risk nor a danger to himself or the community as those terms are used in 18 U.S.C. § 3142. In the event the government becomes aware of any information to the contrary, the government will promptly notify Mr. Waldholtz, through his counsel, of such facts, and the reasons the government contends such facts would support a finding either of risk of flight or danger to the community. The government agrees not to oppose Mr. Waldholtz's request to remove court imposed restrictions on his travel within the United States and to permit him to travel domestically pending sentencing.

8. RESERVATION OF ALLOCUTION

To the extent not inconsistent with the factual recitation contained herein, the United States reserves the right to allocute fully at sentencing, to inform the probation office and the court of any facts it deems relevant, to correct any factual inaccuracies or inadequacies in the presentence report, and to respond fully to any post-sentencing motions. The government agrees that it will not seek an upward departure in Mr. Waldholtz's sentence.

9. SENTENCING GUIDELINES DETERMINATIONS

The parties understand that if Mr. Waldholtz completely fulfills all of his obligations under this agreement, the United States will recommend that he receive the benefit of a 3-level reduction in the sentencing guidelines' offense level, based upon his acceptance of responsibility within the meaning of § 3E1.1 of the United States Sentencing Guidelines ("USSG").

After the government has determined that there is no longer a reasonable need for Mr. Waldholtz's cooperation, the government (through the departure committee of this Office) will determine whether the factors set forth in U.S.S.G. §5K1.1(a)(1)-(5) have been satisfied. If the factors have been satisfied, the government agrees to file a motion on behalf of Mr. Waldholtz under U.S.S.G. §5K1.1, thus affording the sentencing judge the discretion to sentence Mr. Waldholtz below the applicable guideline ranges. Mr. Waldholtz understands that the government has sole discretion whether to file a motion on his behalf under Section 5K1.1 of the Sentencing Guidelines.

Mr. Waldholtz understands that the final determination of how the Sentencing Guidelines apply to this case will be made by the court, and that any recommendations by the parties are not binding on the court or the U.S. Probation Office. The parties

agree that the failure of the court or Probation Office to determine the sentencing range in accordance with the recommendations of his counsel or the government do not void the plea agreement, nor serve as a basis for the withdrawal of Mr. Waldholtz's guilty plea. In addition, in the event that, subsequent to this agreement, the government receives previously unknown information which is relevant to the above recommendation, the government reserves its right to modify its position regarding the recommendations. However, the government agrees that, in the event that it receives any such previously unknown information, it will promptly notify Mr. Waldholtz of the nature and source of this information in sufficient time to permit Mr. Waldholtz to respond to this information.

10. BREACH OF AGREEMENT

Mr. Waldholtz agrees that in the event he fails to comply with any of the provision of this Agreement, or refuses to answer any questions put to him, or makes any material false or misleading statements to investigators or attorneys of the United States, or makes any material false or misleading statements or commits any perjury before any grand jury or court, or commits any further crimes, this Office will have the right to characterize such conduct as a breach of this Agreement, in which case this Office's obligations under this Agreement will be void and it will have the right to prosecute Mr. Waldholtz for any and all offenses that can be charged against him in the District of Columbia, or in any other District or in any State. Any such prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced against Mr. Waldholtz in accordance with this paragraph, notwithstanding the running of the statute of limitations between that date and the commencement of any such prosecutions. Mr. Waldholtz agrees to waive any and all defenses based on the statute of limitations for any prosecutions commenced pursuant to the provisions of this paragraph.

11. USE OF INFORMATION

Mr. Waldholtz understands that, except in the circumstances described in this paragraph, this Office will not use against him any statements he makes or other information he provides pursuant to this plea agreement in any civil, criminal, or administrative proceeding, other than a prosecution for perjury, giving a false statement or obstructing justice.

Mr. Waldholtz agrees that, as provided by Rule 410, Federal Rules of Evidence: (a) the government may make derivative use of and may pursue any investigative leads suggested by any information which he provides pursuant to this plea agreement; (b) in the event Mr. Waldholtz is ever a witness in any judicial

proceeding, the attorney for the government may cross-examine him concerning any statements he has made or information he has provided pursuant to this plea agreement, and evidence regarding such statements and information may also be introduced in rebuttal; and (c) in the event of breach of this Agreement as described in the preceding paragraph, any statements made or information and leads provided by Mr. Waldholtz, whether subsequent to or prior to this Agreement, may be used against him, without limitation, in any proceedings brought against Mr. Waldholtz by the United States, or in any federal, state or local prosecution. Mr. Waldholtz knowingly and voluntarily waives any rights he may have pursuant to Fed. R. Evid. 410 and Fed. R. Crim. 11(e)(6), which might otherwise prohibit the use of such information against him under the circumstances just described.

12. NO OTHER AGREEMENTS

No agreements, promises, understandings or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings or representations be made unless committed to writing and signed by Mr. Waldholtz, his counsel, and an Assistant United States Attorney for the District of Columbia.

If your client agrees to the conditions set forth in this letter, please sign the original and return it to us.

Sincerely,

ERIC H. HOLDER, JR.
United States Attorney

By: William E. Lawler III
WILLIAM E. LAWLER, III
Assistant United States Attorney

Craig Iscoe
CRAIG ISCOE
Assistant United States Attorney

I have read this Agreement, have placed my initials on each page, and carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it. No agreements, promises, understandings or representations have been made with, to or for me other than those set forth above.

6/3/96
Date

Joseph P. Waldholtz
JOSEPH P. WALDHOLTZ

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I am Joseph P. Waldholtz's attorney. I have carefully reviewed every part of this Agreement with him and have placed my initials on each page of this Agreement. It accurately and completely sets forth the entire agreement between Mr. Waldholtz and the Office of the United States Attorney for the District of Columbia.

6/3/96
Date

PAMELA J. BETHEL, ESQUIRE

6/3/96
Date

BARBARA E. NICASTRO, ESQUIRE

FILE COPY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | |
|---|---|
| UNITED STATES OF AMERICA | |
| v. | Criminal No. 96-0185 |
| JOSEPH P. WALDHOLTZ | VIOLATION:<br>18 U.S.C. § 1001<br>(False Statements)<br>2 U.S.C. §§ 437g(d) & 441a<br>(Failure to Report Campaign Contributions)<br>26 U.S.C. § 7206(2)<br>(Assisting in Filing Fraudulent Tax Return) |

JUDGE JOHNSON, J.

FILED

JUN 4 1996

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

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## INFORMATION

The United States informs the Court that:

### COUNT ONE

On or about January 31, 1995, in the District of Columbia and elsewhere, in a matter within the jurisdiction of the Federal Election Commission ("FEC"), JOSEPH P. WALDHOLTZ, as Treasurer of "Enid '94," a campaign committee supporting the election of his wife, Representative Enid Greene Waldholtz, did knowingly and willfully make and use a false writing and document, knowing the same to contain false, fictitious and fraudulent statements or entries, such writing and document consisting of the 1994 Year End Financial Report (FEC Form 3) for "Enid '94," signed by JOSEPH WALDHOLTZ and falsely and fraudulently certifying that the information contained in the report was true and accurate and that:

1. Enid Greene Waldholtz had contributed approximately $1,800,000 of her personal funds to the Enid '94 campaign account

Case Related To R 96-143

at First Security Bank of Utah when, in fact, JOSEPH WALDHOLTZ knew that the $1,800,000 had not come from Enid Greene Waldholtz's personal funds but, instead, had been taken from approximately $2,800,000 that D. Forrest Greene had provided to the personal bank accounts of JOSEPH WALDHOLTZ and Enid Waldholtz during calendar year 1994; and

2. During April of 1994, certain persons residing in Pittsburgh, Pennsylvania had contributed approximately $60,000 to Enid '94, when, in fact, those persons had made no contributions to Enid '94.

**(False Statements, in violation of Title 18 United States Code §§ 1001).**

COUNT TWO

The allegations in Count One are hereby realleged and incorporated by reference and it is further alleged that on or about various dates in 1994 and 1995, including January 31, 1995, in the District of Columbia and elsewhere, JOSEPH P. WALDHOLTZ, as Treasurer of "Enid '94," filed reports with the Federal Election Commission concerning Enid '94, including the 1994 Year End Report (FEC Form 3), in which he knowingly and willfully failed to report that approximately $1,800,000 which had been placed in the personal bank accounts of Joseph and Enid Waldholtz by D. Forrest Greene had been contributed to Enid '94 during calendar year 1994, in violation of FEC contribution limits.

**(Failure to Report Campaign Contributions, in violation of 2 U.S.C. §§ 437g(d) and 441a).**

COUNT THREE

On or about April 14, 1993, JOSEPH WALDHOLTZ did willfully and knowingly aid, assist, counsel and advise Enid Greene Waldholtz in the preparation of her 1993 federal income tax return (IRS Form 1040), which she filed as a married person filing separately, by falsely telling her that he had given her shares of the M.L. Lee Acquisition Fund and falsely informing her of (1) the date on which he allegedly purchased the security, (2) the number of shares that he allegedly purchased, (3) the basis of the security on the date he allegedly purchased it, and (4) the basis of the security on the date that he allegedly sold the security after giving it to Enid Greene Waldholtz, knowing that such information was false and that the false information would be included on the 1993 Form 1040 filed by Enid Greene Waldholtz and would create a capital loss of approximately $55,000, and that the false capital loss would completely offset an actual capital gain of approximately $39,000 that Enid Greene Waldholtz

had to report on her 1993 tax return, and knowing further that the false capital loss would enable Enid Greene Waldholtz to avoid paying capital gains tax on the approximately $39,000 in actual capital gains.

**(Knowingly Assisting in Filing a False Tax Return, in violation of 26 U.S.C. § 7206(2).**

ERIC H. HOLDER, JR.
United States Attorney

By: William F. Lawler III

WILLIAM E. LAWLER, III
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Craig Iscoe

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(202) 514-8316

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | Cr. Nos. 96-143-01 and 96-185-01 (NHJ) |
| | : | |
| JOSEPH P. WALDHOLTZ | : | |
| | : | |

**GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby submits its memorandum in aid of sentencing defendant Joseph P. Waldholtz. In the first section of the memorandum, the government responds to defendant's objections to the Presentence Investigation Report. In the second section, the government summarizes the facts that it believes the Court should consider in sentencing Mr. Waldholtz and recommends that the Court impose a sentence at the top of the applicable guideline range.

## I. RESPONSE TO DEFENDANT'S OBJECTIONS TO PRESENTENCE REPORT

The government responds first to the objections raised by defendant that could affect the Guidelines calculations and then to defendant's other factual challenges.[1]

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[1]On Friday evening, November 1, 1996, defendant's counsel, A.J. Kramer, courteously volunteered to telefax government counsel a copy of the Sentencing Memorandum that he intended to file on Monday, November 4, making it possible for the government to file its response on November 4 as well.

**A. The Court Has a Substantial Legal Basis for Finding that Defendant Should Not Receive Credit for Acceptance of Responsibility.**

Page 8, ¶ 22. The government agrees with the Presentence Report that there is a legal basis for the Court to conclude that Mr. Waldholtz's conduct since he entered his guilty plea on June 5, 1996, demonstrates that he should not receive credit for acceptance of responsibility.[2] As Mr. Waldholtz admitted at the hearing held on September 26, 1996, he committed a multitude of offenses in the three months following his plea. Among other things, Mr. Waldholtz acknowledged committing several financial crimes that were substantially similar to bank fraud, one of the crimes to which he pleaded guilty.

Mr. Waldholtz admitted that he had: (1) knowingly written almost $39,000 in bad checks to his parents; (2) stolen a checkbook from his parents, made the check payable to himself in

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[2]Section 9 of the Plea Agreement between the United States and Mr. Waldholtz provides "if Mr. Waldholtz completely fulfills all of his obligations under this agreement, the United States will recommend that he receive the benefit of a 3-level reduction in the sentencing guideline's offense level, based on acceptance of responsibility . . ." The Section also provides, however, that "the government reserves its right to modify its position regarding the recommendation" if it receives previously unknown information that is relevant to the recommendation.

The government submits that Mr. Waldholtz's commission of new crimes after entering his plea constitutes "previously unknown information" that entitles the government to exercise its right to modify its recommendation regarding whether defendant should receive credit for acceptance of responsibility. In addition, even if the if the government had not reserved that right, it would have retained the right to respond to defendant's arguments regarding the legal issues related to the impact of a defendant's post-plea criminal offenses on the Court's determination of whether the defendant has accepted responsibility for the offenses to which he pleaded guilty.

the amount of $415, and then forged his father's signature to the check and cashed it; (3) knowingly written a bad check to an optical store; (4) fraudulently obtained and used several different credit cards intended for use by his father and opened accounts in his father's name without his father's knowledge or consent; (5) borrowed a credit card from a friend and then improperly used it; (6) stolen another credit card from the purse of the same friend and fraudulently used that card; and, (7) fraudulently rented an automobile and failed to return it, forcing the rental company to repossess the car. In addition to those offenses, Mr. Waldholtz also admitted that he had: (1) begun using heroin and (2) used his father's Drug Enforcement Administration number (his father is a dentist) to obtain Vicodin tablets.

Defendant contends that despite his commission of those offenses since pleading guilty, he should still receive credit for acceptance of responsibility. The case law and Sentencing Guidelines are to the contrary. First, it is undisputed that the sentencing judge has great discretion in determining whether a defendant has accepted responsibility. Application Note 5 to the Guidelines § 3E1.1(a) provides:

> The sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility. For this reason, the determination of the sentencing judge is entitled to great deference on review.

An appellate court will reverse the trial court's determination only if it is "clearly erroneous" and is without foundation. See United States v. Morrison, 983 F.2d 730, 732 (6th Cir. 1993) and

United States v. Thomas, 870 F.2d 267, 270 (5th Cir. 1989).

It appears undisputed within the circuits that where, as here, the defendant engages in new criminal activity that is substantially similar to, or related to, that for which he has pleaded guilty, the sentencing court has discretion to refuse to grant a reduction for acceptance of responsibility. United States v. McDonald, 22 F.3d 139, 142-144 (7th Cir. 1994) and Morrison, supra at 733-735. The only issue that is unresolved in some circuits is whether the sentencing court may refuse to grant a reduction in instances in which the new offense is completely unrelated to the previous one. The most common circumstance in which that question is raised occurs when a defendant who has pleaded guilty to a non-drug related offense uses illegal drugs while on release pending sentencing. In McDonald, the Seventh Circuit reviewed the relevant case law on that issue and noted that,

> [t]he First, Fifth and Eleventh Circuits hold that a defendant is not entitled to a reduction if he or she has used a controlled substance while on release pending sentencing. The Sixth Circuit [in Morrison] disagrees.

22 F.3d at 142, citing United States v. O'Neil, 936 F.2d 599 (1st Cir. 1991); United States v. Watkins, 911 F.2d 983 (5th Cir. 1990); and, United States v. Scroggins, 880 F.2d 1204 (11th Cir. 1989), cert. denied, 494 U.S. 1083 (1990).

The Seventh Circuit decided to follow the majority of the circuits and held that the sentencing court properly exercised its discretion when it denied credit for acceptance of responsibility to a defendant who, after pleading guilty to

aiding and abetting the counterfeiting of obligations of the United States in violation of 18 U.S.C. §§ 471 and 472, repeatedly failed to submit urine samples and tested positive for the use of marijuana. McDonald, supra at 144. Thus the Seventh Circuit joined the First, Fifth and Eleventh Circuits in holding that the sentencing court may deny credit for acceptance of responsibility to a defendant who commits any crime after pleading guilty and before being sentenced.

In the instant matter, several of Mr. Waldholtz's new offenses, all of which he has admitted, are substantially similar to one or more of the offenses to which he pleaded guilty. Writing bad checks to his parents and to an optical shop, fraudulently applying for and using credit cards in his father's name, stealing a check from his parents forging his father's signature, stealing and using a credit card belong to a friend, borrowing and improperly using a credit card, and fraudulently renting and refusing to return a rental car all constitute crimes that are substantially similar to, or related to the offense of bank fraud to which Joseph Waldholtz pleaded guilty on June 5, 1996.

Under the law of every circuit that has considered the issue, therefore, a sentencing judge would have complete discretion to deny Waldholtz credit for acceptance of responsibility because he committed new crimes that were of the same nature as one of the offenses for which he pleaded guilty. In addition, by using heroin and Vicodin, and fraudulently

obtaining Vicodin from a pharmacy, Mr. Waldholtz has engaged in new crimes that are different from the ones to which he pleaded guilty but which, under the rationale followed by the First, Fifth, Seventh and Eleventh Circuits, also demonstrate his failure to accept responsibility. The Court, therefore, has a strong basis for finding that Mr. Waldholtz has not accepted responsibility within the meaning of the Sentencing Guidelines.

**B. The False Statements and Filing a False Report Involved More Than Minimal Planning and a Two Level Increase is Warranted.**

Page 9, ¶ 33. Defendant's contention that the offenses of making false statements (18 U.S.C. § 1001) and filing a false Federal Election Commission report (2 U.S.C. §§ 437g(d)(1)(A)) and 441) involved only minimal planning ignores the facts. Mr. Waldholtz, sometimes with the assistance of Enid Greene, obtained 26 different advances of cash totalling approximately $4.1 million, from Enid Greene's father, Dunford Forrest Greene, during 1994 and 1995, which Mr. Waldholtz deposited into accounts in his name or joint accounts that he held with his wife. Mr. Waldholtz, over a period of many months, contributed about $1.8 million of that amount directly to Enid Greene's 1994 Congressional campaign.[3]

Contrary to defendant's assertion, he did not make a single,

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[3]Enid Greene has publicly contended that she was unaware that Waldholtz was contributing funds that could be considered loans or gifts from her father or otherwise violating FEC regulations. On October 31, 1996, the government announced that it had declined prosecution of Rep. Greene for all matters related to her 1992 and 1994 Congressional campaigns and her 1993 federal tax return.

lump sum contribution of $1.8 million. Instead, he made more than 20 separate transfers of funds from the Waldholtz/Greene accounts to Greene's 1994 campaign committee, which was in the name "Enid '94," and failed to report the source of those funds accurately to the FEC. In addition, Mr. Waldholtz made several cash contributions to the campaign with funds provided by Mr. Greene and failed to report those contributions.[4]

Moreover, Mr. Waldholtz's improper reporting of the contributions was not limited to the 1994 Year End Report. That Report not only contained concealment and misreporting of new contributions, it also repeated and incorporated reporting violations that Mr. Waldholtz had made in the Enid '94 (1) Twelfth Day Report preceding General Election and (2) Thirtieth Day Report following General Election. Thus, the Year End Report included and repeated misrepresentations and false statements that Mr. Waldholtz had made in two previous reports that he signed and filed with the FEC.

In addition, Mr. Waldholtz filed at least six other FEC reports for 1994 that contained false information. Those reports

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[4]On March 8, 1996, Rep. Greene filed a lengthy complaint with the FEC alleging that Mr. Waldholtz is guilty of 858 violations of the Federal Election Campaign Act based on his actions regarding her 1992, 1994 and 1996 campaign committees. Even if that total is substantially inflated by considering a single action to constitute as many as five violations, the complaint does document in great detail the evidence against Mr. Waldholtz for civil FEC infractions. The great majority of those alleged violations stem from Mr. Waldholtz's actions during the 1994 campaign, to which he has pleaded guilty. Regardless of the precise total of Mr. Waldholtz's FEC infractions, it is clear from the sheer number and magnitude of the offenses that they involved more than minimal planning.

include the Enid '94 (1) April 15 Quarterly Report, (2) Twelfth Day Report preceding Utah Republican Convention, (3) July 15 Quarterly Report, (4) Amendment to July 15 Quarterly Report, (5) October 15 Quarterly Report, and (6) Amendment to October 15 Quarterly Report. Mr. Waldholtz had to design and coordinate carefully his false reporting to the FEC and there can be no doubt that he engaged in more than minimal planning.

**C. Mr. Waldholtz's Actions Affected the Outcome of the 1994 Congressional Election.**

Page 19, ¶ 103. Although it is always impossible to state with absolute certainty whether particular actions changed the outcome of an election, it is widely accepted within the Second Congressional District of Utah that the substantial illegal and unreported contributions that Joseph Waldholtz made to Enid Greene's campaign with her father's money enabled Rep. Greene to win the election. Rep. Greene has acknowledged as much herself. During a five hour news conference that she held after it was revealed that her father's money had financed her campaign, Rep. Greene stated, "[t]here's no way to return an election. I wish there were." Salt Lake City Tribune, Dec. 17, 1995 at p. A-1 (emphasis added). She also publicly apologized to her 1994 opponents, Democrat Karen Shepherd and Independent Merrill Cook, for using tainted money and to her constituents for "creating a circus" in the campaign. Salt Lake City Tribune, Dec. 12, 1995 at p. A-1. She added, "[y]ou can't give an election back." Id. Mr. Waldholtz has also admitted to the Probation Officer that his actions enabled his then-wife to win the

election.

Perhaps not surprisingly, the candidates that Rep. Greene defeated in 1994 agree with her that the illegal contributions caused Greene to win the election. Speaking for Shepherd and the Utah Democratic Party, party executive Todd Taylor stated,

> I'm not saying her [Enid Greene's] message didn't have something to do with it, but I firmly believe that it was a stolen election. To go from last place to first place in a month had to be a function of money.

Salt Lake City Tribune, Dec. 17, 1995 at p. A-1. According to the Tribune, Independent candidate Merrill Cook claims that he would have beaten Greene and Shepherd "had it not been for Enid's last minute infusion of cash." Salt Lake City Tribune, March 14, 1996 at p. B-1.

The campaign spending by Enid '94 was a key issue before the November 1994 general election, with many questioning where the campaign was getting its money. During the campaign, Greene stated she and Joseph Waldholtz had been forced by the Shepherd and Cook campaigns to make a "considerable personal investment" in the campaign." Salt Lake City Tribune, October 18, 1994 at p. A-1. Responding to inquires regarding the source of contributions to Enid '94, one of Greene's campaign representatives stated, "[i]t's family money. It's Joe and Enid's. End of story." Id. Cook, who himself is wealthy and spent nearly $600,000 of his own money on the 1994 campaign stated shortly before the 1994 election, "I'm honest enough to say Enid has out-Merrill Cooked Merrill Cook -- by a mile." Salt Lake City Tribune, October 18, 1996 at p. A-1. Cook added that

although he had earned his money, Greene's had come from a merger of marriage. Id. Had the true source of the illegal campaign contributions been revealed before the election, the outcome of the election might have been different.

Voter polls conducted at various times before the 1994 election confirm that Greene's support began to increase at the same time that her campaign began purchasing large amounts of television advertisements. In early October of 1994, a Salt Lake City Tribune poll found that 36% of the voters planned to vote for Shepherd with Waldholtz (Greene) and Cook each drawing 26% of the vote. Salt Lake City Tribune, October 22, 1994 at p. B-1. The poll also found that Waldholtz had gained 8 points since the previous poll. Id.

On the Sunday before the Tuesday election, the Tribune reported,

> Propelled by an advertising avalanche made possible by some $2 million of mostly personal money, Republican Enid Greene Waldholtz broke her ideological logjam with Independent Merrill Cook and is in a political death grip with Democrat Karen Shepherd, a survey for The Salt Lake City Tribune of 1,436 likely voters for the 2nd Congressional District indicates.
>
> The final week canvass of the district by Valley Research, The Tribune's independent pollster, showed Waldholtz and incumbent Shepherd dead even at 32 percent as of Saturday afternoon . . . Cook is left in third place with 21 percent of the straw vote . . .
>
> . . .
>
> Shepherd had enjoyed a lead of 8 to 10 points until mid-October, according to earlier Tribune polls. Waldholtz's money began to talk via voluminous 30- and 60- second sound bites in the latter days of the race, however, and portions of Cook's followers and would-be supporters from the undecided column, most of whom have

> Republican leanings, appear to have listened. Cook had 27 percent of the respondents in an Oct. 1 poll, for instance. Whatever the size of Cook's defections, Waldholtz is the beneficiary on a 2-to-1 basis over Shepherd, said Sally Christensen, manager of Valley Research of Salt Lake City.

Salt Lake City Tribune, October 22, 1994, at p. B-1.

Greene ultimately won the 1994 election with 46 percent of the vote. Shepherd received 36 percent and Cook garnered 18 percent of the vote total. Congressional Quarterly's Politics in America -- 1996, Congressional Quarterly Publications (1995), p. 1339. Greene received 18,596 more votes than Shepherd in 1994. Id. In 1992, Shepherd received 51 percent of the vote, Greene received 47 percent and an independent candidate got two percent. Congressional Quarterly's Politics in America -- 1994, Congressional Quarterly Publications (1993), p. 1549. In 1992, Shepherd received 9,431 more votes than Greene. Id.

**D. Other Factual Issues**

**1. Whether Waldholtz's Daughter is his Dependent**

Page 2. The government does not dispute Mr. Waldholtz's statement that he considers his daughter, Elizabeth, to be his dependent, but does not know whether she is a "dependent" as that term is defined by the Probation Office.

**2. Dates of Marriage and House Purchase**

Page 4, ¶ 6. The government agrees that Mr. Waldholtz and Rep. Greene were married on August 7, 1993 and that they purchased their home on South Benecia Drive in Salt Lake City, Utah, before they were married.

**3. Whether Rep. Greene Knew Tax Information was False**

Page 4, ¶ 7. Mr. Waldholtz pleaded guilty to Assisting in Filing a Fraudulent Tax Return, in violation of 26 U.S.C. § 7206(2), for providing Enid Greene false information that she used on her 1993 federal tax return. Under that section, it is not necessary for the government to establish whether the person who filed the return (Rep. Greene) knew that the information was false, as long as the person who provided the false information (Mr. Waldholtz) knew that it would be used in the return.. Whether or not Rep. Greene knew that the information was false, therefore, Mr. Waldholtz is equally culpable. In this regard, it should be noted that the government has declined criminal prosecution of Rep. Greene for her actions regarding the 1993 tax return.

Accordingly, it is not necessary for the Court to make a determination on Rep. Greene's level of awareness. Consistent with Fed. R. Crim. P. 32(c)(1), the Court may simply make a determination that no finding on Rep. Greene's culpability is necessary because it will not take Rep. Greene's actions regarding the 1993 return into account when it sentences Mr. Waldholtz and that her actions will not affect the sentence.

**4. Who Made Decision that Greene Would Run in 1994**

Page 7, ¶ 18. The government takes no position on how the decision that Enid Green would run for Congress in 1994 was made. Again, consistent with Fed. R. Crim. P. 32(c)(1), the Court may make a determination that no finding on this matter is

required because the Court will not take the matter into account when it sentences Mr. Waldholtz and that the disputed matter will not affect the sentence.

**5. FEC Reports Filed Before Waldholtz Moved to Utah**

Page 10, ¶ 54. The government agrees that FEC reports for Enid Greene's 1992 campaign that were filed before Joseph Waldholtz moved to Utah contained errors and that Waldholtz filed erroneous reports for the 1992 campaign after he moved to the state. The government takes no position on whether the false reports were filed with Greene's "full knowledge and acquiescence." Again, consistent with Fed. R. Crim. P. 32(c)(1), the Court may make a determination that no finding on this matter is required.

**6. Rep. Greene Did Not Withhold Documents Waldholtz Needed to File an Accounting of His Grandmother's Estate.**

Page 13, ¶ 65. The government disputes Waldholtz's contention that he did not file an accounting of the estate of his grandmother, Rebecca Levenson, because Ms. Greene's attorneys had the requested documents and would not return them. Waldholtz made a similar claim regarding the government, and neither has merit. After Judge Kelly held Waldholtz in contempt in Pittsburgh, Waldholtz's attorney telephoned undersigned government counsel and told him that Waldholtz had told the attorney that the government had all the documents related to the Levenson estate.

Government counsel informed the attorney, and now informs the Court, that the government has never had any documents related to the estate of Rebecca Levenson. In addition, the government informs the Court that Enid Greene's attorneys have provided the government with full access to documents within Greene's possession and control and the government has no reason to believe that Greene's counsel withheld any documents from it. The government has carefully reviewed those documents and has not found any that relate to the Levenson estate.

**7. Additional Personal Issues**

Page 14, ¶ 66. The government takes no position on whether Mr. Waldholtz loved, or continues to love, his former wife. The government agrees with defense counsel that Rep. Greene receives financial assistance from her parents and notes that until January of 1996, she will continue to receive her Congressional salary. The government agrees with defense counsel that Rep. Greene was the one who decided to sell her home on South Benecia Drive. The government further agrees that Forrest Greene has sued Waldholtz for $ 4.1 million and informs the Court that Mr. Greene received a default judgment against Waldholtz. The government has seen no evidence, however, that Waldholtz has the assets needed to pay the judgment.

The government submits that, as discussed above, the Court need not resolve any of the issues raised by defendant regarding this paragraph and, consistent with Fed. R. Crim. P. 32(C)(1), the Court may make a determination that no finding on these

matters is required.

**8. The Government takes No Position on an Upward Departure Based on Waldholtz's Conduct While on Release.**

Page 18, ¶ 102. The government takes no position on whether an upward departure is warranted because of Mr. Waldholtz's conduct on release. The government also notes that in the final sentence of Section 8 of the plea agreement it stated that it would not seek an upward departure. There is a strong argument that the United States is no longer bound by that sentence because Section 10 of the Plea Agreement provides that the government may consider the agreement to be breached if the defendant commits new crimes after pleading guilty and before being sentenced. The United States will, however, continue to act as if it is bound by the Plea Agreement and is not requesting an upward departure.

The government has informed defendant's counsel, A. J. Kramer, of its position. Based on conversations with Mr. Kramer, undersigned counsel believes that both sides recognize that the Court may sua sponte determine that an upward departure is warranted. The Court announced that it was considering an upward departure in its letter to counsel of October 22, 1996.

## II. The Court Should Sentence Joseph Waldholtz to the Maximum Term Permissible Under the Applicable Guideline Range

### A. Introduction

Through his actions, Joseph Waldholtz has done more than commit three serious felonies and one misdemeanor, although that

is bad enough. As discussed above, by his illegal acts, Mr. Waldholtz stole a federal election.[5] Mr. Waldholtz defrauded the residents of Utah's Second Congressional District and, by extension, all the citizens of the United States who are affected by the House of Representatives. The Court should sentence Mr. Waldholtz to the maximum term permitted within the applicable Guideline range.

The Presentence Report concludes that Mr. Waldholtz is at an offense level of 18, which means that the Court may sentence him to incarceration for 27 to 33 months. The government urges the Court to impose a sentence of 33 months if it determines that the Guideline range is appropriate. As discussed above, the government submits that the offense level of 18 was correctly calculated. If the Court should determine that the offense level should be reduced, however, then it should sentence the defendant to the maximum amount permitted under the new Guideline range. If the Court should grant an upward departure, the government has no recommendation on the appropriate sentence within the new Guideline range.

**B. Defendant Has Demonstrated a Contempt for the Law**

Joseph Waldholtz is a con artist whose continued pattern of fraud and deceit has assumed pathological dimensions. The Court is aware of the facts behind the four crimes to which Mr. Waldholtz pleaded guilty, which are accurately set forth in the

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[5]For the purposes of sentencing defendant Waldholtz it is immaterial whether the beneficiary of his actions, Enid Greene, was completely unaware of his actions or a knowing participant.

Presentence Report and Plea Agreement, and the government will not elaborate them further. Those facts, however, do not fully convey Mr. Waldholtz's persistent unwillingness -- or inability -- to tell the complete truth or to conform his conduct to the law. By committing so many additional offenses after pleading guilty, and by trying to avoid coming to Court for his revocation hearing, the defendant has demonstrated that he does not take either the judicial system or the criminal laws seriously.

The United States entered into a plea agreement with Mr. Waldholtz because it believed that the agreement, which required defendant to plead guilty to felonies in three different substantive areas and to a misdemeanor, represented a fair disposition of the charges against him. Had the government taken the case to trial, and had the jury convicted Waldholtz of all counts in the indictment, Waldholtz would faced a prison sentence that was less than a year longer than the one he faced upon entering the plea agreement. The plea agreement did not provide Waldholtz with any special treatment but, instead, was similar to the plea agreements that the United States routinely enters with defendants who choose to plead guilty and avoid trial.

In addition, although the plea agreement provided that if Waldholtz substantially assisted in the government's investigation, the United States Attorney could recommend that he receive a downward departure pursuant to Guidelines Section 5K1.1, the government informed defense counsel that, barring some unanticipated information from Mr. Waldholtz, it was not likely

that the government would recommend a downward departure. The government was never under the illusion that Mr. Waldholtz could be trusted completely and never relied on any information that he provided unless it could be corroborated by independent evidence. The government did expect, however, that Mr. Waldholtz would show sufficient respect for the legal system, and for his own well-being, that he would refrain from committing new crimes during the three and half months between his guilty plea and his sentencing.

Government counsel were surprised that Mr. Waldholtz committed so many new offenses during a time when he should have been on his best behavior. Those actions demonstrate his utter disregard for the law and his belief that he can manipulate any person or entity to his own benefit. Mr. Waldholtz evidently also believes that he can cheat and manipulate his family and friends with impunity because they will not bring charges against him. Even though Mr. Waldholtz's efforts at manipulation are often almost completely transparent, the persistence of the efforts demonstrates a complete lack of remorse and further affirms the need to sentence him to the maximum term under the applicable Guideline range.

### C. The Court Should Not Recommend Defendant for Placement in an Intensive Confinement Center ("ICC").

#### 1. Overview of ICC Program

Intensive Confinement Centers are an outgrowth of the "Shock Incarceration Program", 18 U.S.C. § 4046, which was enacted by Congress in 1990 following extensive hearings and

discussions of state "boot camp" programs. The statute provides:

> The Bureau of Prisons may place in a shock incarceration program any person who is sentenced to a term of imprisonment of more than 12, but not more than 30, months, if such person consents to that placement.

18 U.S.C. § 4046(a). The statute defines the shock incarceration program as a "a highly regimented schedule" of "strict discipline, physical training, hard labor, drill, and ceremony characteristic of military basic training," combined with "appropriate job training, and educational programs (including literacy programs) and drug, alcohol, and other counseling programs." (18 U.S.C. § 4046(b)(1) and (2)).

An inmate who completes the program,

> shall remain in the custody of the Bureau [of Prisons] for such period (not to exceed the remainder of the prison term otherwise required by law to be served by that inmate) and under such conditions, as the Bureau deems appropriate.

18 U.S.C. § 4046(c). In practice, the Bureau has interpreted this subsection to give it authority to release inmates from custody before the expiration of their sentences and to place them in half-way houses or home confinement earlier than Bureau regulations otherwise permit. See Bureau of Prisons, Operations Memorandum 249-93.

**2. An inmate in the ICC program may be released into the community a year and half earlier than normal and have his sentence reduced without additional input from the Court.**

For an inmate, therefore, entry into an ICC has substantial benefits. An inmate who complete six months of "boot camp" at an ICC is immediately eligible to be placed in a half-way house and

may soon have his sentence reduced by the Bureau of Prisons without any additional input from the Court. Ordinarily, inmates are not eligible to enter a half-way house until they have served all but six months of their sentence. An inmate who enters an ICC immediately after being sentenced to 30 months of incarceration, for example, may be released to a half-way house six months later, with 24 months still remaining on his sentence. Such an inmate would enter the half-way house at least 18 months earlier than he would have had he not been placed in an ICC.

Moreover, the Bureau of Prisons has complete discretion to release the inmate from its custody entirely. If it does so, then the Bureau of Prisons is effectively reducing the inmate's sentence without any further input from the Court. The government submits that Mr. Waldholtz should not be given an opportunity to manipulate the Bureau of Prisons in that manner.

### 3. The ICC Program is Not Intended For 33 Year Old, College-Educated White Collar Criminals With Serious Psychological Problems.

At the Congressional hearings on the shock incarceration program, there was testimony that "most [state shock incarceration programs] are limited to persons under a certain age, no older than early twenties, in order to have young, impressionable inmates in the program." House of Representatives, Hearings before the Subcommittee on Crime of the Committee on the Judiciary; 101st Congress, Second Sess., Serial No. 149, March 21 and 29, May 24, 1990, p. 178 (emphasis

added).[6] Certainly, the state programs after which the federal program was modeled are not intended for persons like Mr. Waldholtz who are neither in their early twenties nor impressionable.

Although there is some reason to believe that Mr. Waldholtz would benefit from a program of strict discipline and regimentation, the ICC program *is not intended for* persons like the defendant. Mr. Waldholtz has a college education and does not need literacy or educational training. In addition, although Mr. Waldholtz has used illegal drugs, drug usage is not a major cause of his criminal activity. Moreover, the ICC program would not provide Mr. Waldholtz with the mental health treatment that he so clearly appears to need. The psychological assessments submitted by Mr. Waldholtz's counsel do not excuse his actions or support mitigation of his sentence, but they do indicate that Mr. Waldholtz needs a more personalized and psychologically based treatment regimen than the ICC program provides.

The government recommends against permitting Mr. Waldholtz to enter the ICC program because it would substantially reduce

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[6]Congress carefully examined state shock incarceration programs and considered testimony by many state prison officials, experts in behavior and correctional institution and other before enacting 18 U.S.C. § 4046. See Hearings cited above and Federal Role in Promoting and Using Special Incarceration, Hearings before the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs. Senate Hearing 101-722. United States Senate, 101st Congress, Second Sess. January 29 and March 1, 1990 ("Senate Hearings"); and Sentencing Option Act of 1989, Hearing before the Subcommittee on Criminal Justice of the Committee on the Judiciary. United States House of Representatives. 101st Congress, First Sess. Serial No. 27. September 14, 1989.

the length of his sentence. Mr. Waldholtz does not fit the profile of persons who would benefit from the program. If Mr. Waldholtz were admitted into the ICC program, he would use the program to avoid confronting his underlying psychological problems and, once again, manipulate the system -- this time to get out of prison early.

## III. CONCLUSION

The Court should sentence defendant Waldholtz to the maximum sentence permitted under the applicable Guideline range and should not recommend him for placement in an Intensive Confinement Center.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent by tele-facsimile and first class mail, postage prepaid mail to counsel for Joseph Waldholtz, A. J. Kramer; Federal Public Defender, 625 Indiana Avenue, N.W.; Suite 550; Washington, D.C., 20004, this fourth day of November, 1996.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH WALDHOLTZ,

Defendant.

Filed

Criminal Action No. 96-143 and
96-185 (NHJ)

FILED

NOV - 7 1996

CLERK U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

SENTENCING MEMORANDUM

The Court has received the written objections of defendant to the Presentence Report and the government's response. Having afforded counsel an opportunity for argument at a hearing held on November 7, 1996, the Court has determined that certain controverted matters are not relevant to its determination and thus will not be taken into account in, and will not affect, sentencing. *See* Fed. R. Crim. P. 32(c)(1) (1996). In making its sentencing decision, the Court has not considered the following matters that appear to be disputed: (1) whether Enid Greene (hereinafter "Greene") insisted on running for election in 1994; (2) whether false Federal Election Commission reports were filed with Greene's knowledge or consent; (3) whether defendant's failure to supply a Pennsylvania court with documents relating to his grandmother's estate was caused by Greene's withholding of the documents; (4) whether defendant depleted his grandmother's estate before or after his marriage to Greene; (5) whether Greene currently receives financial assistance from her parents; and (6) whether defendant once loved or continues to love Greene.

At the November 7, 1996, hearing, the parties agreed that three amendments should be

made to the Presentence Report. Accordingly, Page 5, ¶ 7, line 2, shall read: Representative Greene stated that he falsely informed her that he had some securities, M.L. Lee Acquisition, in which he lost a considerable amount of money. Page 14, ¶ 66, line 1, shall be changed from August 2, 1993, to August 7, 1993. Page 14, ¶ 66, line 18, shall read: Because of him, she asserts she is broke, ruined, and a single parent.

The Court finds that defendant's continuing criminal conduct after his guilty pleas is incompatible with acceptance of responsibility. *See* U.S. SENTENCING GUIDELINES MANUAL § 3E1.1, comment, n.3 (1995); United States v. McDonald, 22 F.3d 139, 144 (7th Cir. 1994); United States v. O'Neil, 936 F.2d 599, 600 (1st Cir. 1991); United States v. Cooper, 912 F.2d 344, 346 (9th Cir. 1990); United States v. Wivell, 893 F.2d 156, 159 (8th Cir. 1990); United States v. Scroggins, 880 F.2d 1204, 1216 (11th Cir. 1989). Many of these offenses, including uttering, misappropriation of checks, and fraudulent use of a credit card, are similar to the bank fraud to which he pleaded guilty. *See* United States v. Morrison, 983 F.2d 730, 734 (6th Cir. 1993). By continuing to engage in criminal acts of the same nature as one of the offenses to which he pleaded guilty, defendant has demonstrated that he does not accept responsibility for the crimes in this case. The Court finds that a reduction in the offense level for acceptance of responsibility is not warranted.

The Court finds that defendant's conduct with respect to Counts I and II of the criminal information filed in criminal action 96-185 required more than minimal planning. Defendant obtained more than 26 different advances, totaling $4.1 million, from Greene's father. He deposited these funds into one of two bank accounts: an account held in his name or a joint account held with his wife. He subsequently made 20 transfers, totaling $1.8 million, over a

period of months to Greene's 1994 campaign committee. Defendant failed to report these and other campaign contributions in the Enid '94 Twelfth Day Report preceding the election and the Thirtieth Day Report following the general election. He subsequently incorporated the omissions and false statements in these two reports into the Year End Report. The sophistication of defendant's scheme, combined with his repeated acts over a period of time, demonstrates careful planning and execution. *See* U.S. SENTENCING GUIDELINES MANUAL § 1B1.1, comment. n.1(f) (1995). The Court finds that a two level enhancement for more than minimal planning is warranted. *See* U.S. SENTENCING GUIDELINES MANUAL § 2F1.1(b)(2)(A) (1995).

In addition, the Court has determined that the total offense level should be adjusted upward to account for defendant's continuing criminal activity while on release. Under 18 U.S.C. § 3553(b), a sentencing court may impose a sentence outside the applicable guideline range if "there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission." 18 U.S.C. § 3553(b) (1994); U.S. SENTENCING GUIDELINES MANUAL § 5K2.0 (1995). Such aggravating circumstances are present here.

The Court of Appeals for this Circuit has held that post-offense misconduct is a proper basis for an upward departure in offense level if it shows extensive criminal involvement. U.S. v. Fadayini, 28 F.3d 1236, 1242 (D.C. Cir. 1994). Defendant admitted at a September 26, 1996, hearing that he had committed numerous offenses during the four month period of his release pending sentencing. Among other things, defendant forged a prescription, misappropriated checks from his father, wrote an unauthorized check for $415 on his father's account, wrote more than $18,000 in checks for which there were insufficient funds, misappropriated a credit card

from his father, misappropriated a credit card from a friend, and made unauthorized purchases with the two misappropriated credit cards. In other words, after his release, defendant perpetrated fraud upon his family and friends and continued his practice of writing checks for which there were no funds on deposit. Although this case does not fit squarely into the enhanced penalty provided for under Section 2J1.7 for commission and conviction of a federal crime while on release, the underlying purpose of that section applies here: the imposition of an enhanced penalty for criminal conduct while on release. *See* U.S. SENTENCING GUIDELINES MANUAL § 2J1.7 (1995). Because defendant's post-release conduct is not adequately taken into consideration by the Sentencing Commission, the Court will impose a three offense level upward *departure*. *See* U.S. v. Fadayini, 28 F.3d at 1242 (finding that a three level departure was reasonable because it was the same level of departure recommended by § 2J1.7).

Norma Holloway Johnson

NORMA HOLLOWAY JOHNSON
UNITED STATES DISTRICT JUDGE

Dated: November 7, 1996

FEC STARTS GREENE PROBE; GREEN ... 10/01/97

**Salt Lake Tribune**

**Types:** »Utah«
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# FEC Starts Greene Probe; Greene: FEC Begins Investigation

***Byline:*** *BY DAN HARRIE THE SALT LAKE TRIBUNE*



The Federal Election Commission has launched an investigation into Enid Greene's 1994 congressional campaign, and the admitted $1.8 million illegally funneled into her victorious election.

Three former campaign aides to the one-term Republican congresswoman from Salt Lake City confirmed to The Salt Lake Tribune that they have been interviewed by FEC investigators.

Greene, who recently moved back to Salt Lake City from Washington, D.C., said Tuesday she was aware of the probe -- and welcomed it.

``I'm talking with the FEC. We talk with them whenever they make a request,'' she said. ``I'd like to get this resolved once and for all.''

Unlike the previous FBI and Justice Department probe into the tangled cash and political intrigue of Greene and her ex-husband, Joe Waldholtz, the FEC investigation carries no threat of criminal prosecution. That earlier case ended in Waldholtz going to to prison for bank, election and tax fraud. Greene was cleared of crimes.

But millions of dollars in fines could be at stake in the FEC case.

``Knowing and willful'' campaign-finance violations carry civil penalties up to double the amount involved -- in this case $1.8 million.

The source of the cash illegally poured into Greene's victorious 1994 election was the candidate's father -- retired stock broker D. Forrest Greene. A relative, like any other individual, is allowed to contribute a maximum of $3,000 per election cycle.

Throughout the 1994 campaign and for most of 1995, Greene maintained the money legally went into the campaign from the sale of a money-market account that belonged to her. A candidate is allowed to spend unlimited amounts of personal wealth on elections.

Finally, in a marathon five-hour December 1995 tell-all news conference, she acknowledged the money came from her father. And she claimed Joe -- posing as a millionaire whose funds were temporarily tied up -- tricked her father into loaning him $4 million. About half of that went into the campaign.

FEC spokesman Ian Stirton said he could neither confirm nor deny the long-awaited probe because of confidentiality restrictions.

But representatives from the FEC's office of general counsel recently have contacted at least three former campaign workers in connection with the ongoing probe.

Former Greene campaign manager and one-time congressional aide David Harmer said he was interviewed for about four hours on consecutive days just two weeks ago.

Another ex-campaign manager, Kaylin Loveland, was questioned about a month ago, and former Greene political consultant Peter Valcarce was interviewed in mid-August.

None of the three would talk about specific issues covered, citing confidentiality provisions. They did say the interviews were wide-ranging, and that many questions covered familiar territory, reminiscent of the earlier Justice Department case, which included an intensive grand jury investigation.

Greene pointed out the FEC investigation may be connected to the complaint she filed in March 1996 accusing former husband and one-time campaign treasurer Waldholtz of 858 violations of election law.

Stirton confirmed that complaint still is open. But he refused to comment on whether the FEC has initiated its own probe to look at a wider cast of potential wrongdoers, including Greene or her father.

However, there are indications the investigation is a new one and not limited to allegations and issues raised in Greene's complaint.

Loveland said she had been questioned in connection with that matter much earlier. She said she felt free to talk about that because she was listed as a party, along with Waldholtz.

But Loveland declined to discuss the more recent interview session -- except to confirm that it occurred.

``It was just an interview with the FEC and I can't really tell you what the subject of it was,'' she said, adding she was following the instructions of agency officials.

Greene said she did not know how the investigation is ``structured'' and whether it includes or is separate from the complaint she filed in early 1996.

The only thing certain, she added, was that ``they're looking at the 1994 campaign.''

Greene also ran for Congress in 1992, but narrowly lost to Democrat Karen Shepherd, who Greene then returned to defeat two years later. There have been questions about the financing of that campaign because Greene used proceeds from the sale of a house to her parents, although county records indicate the transaction was not finalized until after the election.

The former congresswoman, who is exploring ``a variety'' of employment options in Utah, said she is confident the current probe will end as did the first one -- laying all culpability at the feet of Waldholtz.

``The Justice Department after a year's extensive investigation discovered it all went back to Joe. I'm sure the FEC will find the same thing,'' Greene said.

She said there ``shouldn't be any risk'' of fines against her or her father.

``There have been cases where there have been rogue treasurers who have used the campaigns for their own purposes and in each of those instances, the treasurer has been fined but the candidate and the campaign have not been,'' she said.

Waldholtz already faces a $4 million civil judgment in 3rd District Court for lying to D. Forrest Greene to obtain loans from him. Waldholtz, who remains in federal prison and is purportedly broke, has paid just $20,000 against that year-old debt.

Greene said her ex-husband's ability to pay any judgment or FEC fines is beside the point. ``What he did needs to be acknowledged,'' she said.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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|---|---|---|
| UNITED STATES OF AMERICA | . | Docket No. CR 96-0143 |
| | . | Docket No. CR 96-0185 |
| vs. | . | |
| | . | Washington, D. C. |
| JOSEPH P. WALDHOLTZ, | . | November 7, 1996 |
| | . | 9:45 a.m. |
| Defendant | . | |
| | . | |
| . . . . . | . | |

VOLUME 1-B
PARTIAL TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE NORMA HOLLOWAY JOHNSON
UNITED STATES DISTRICT JUDGE

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Computer-Aided Transcription of Stenographic Notes

(EXCERPT)

THE DEFENDANT: Thank you, Your Honor, for allowing me the opportunity to address this Court.

Yesterday, as I was reading a newspaper, I came across an Associated Press story of a person who graduated from college and cheated on an exam. And this gnawed away at her and she made it public, and she said something that I think very much applies to me: Once you cheat, then you have to cover it with a lie. And that's precisely what I have done. She said, in that process, you deceive all the people into thinking you are something you are not. And that's something that I've done. She ended it by saying something that a friend of mine said to me, a good friend from Pittsburgh, some months ago: The truth really does set you free. And I have found that to be the case in the past six weeks.

This past year has been a nightmare for so many people: my family, my friends, my former wife, and her family. To them, I would like to express my deepest regret and sorrow for my actions. My behavior was deplorable. And I alone am responsible. I did commit crimes against the United States. It is my responsibility, and my responsibility alone. These actions go against everything that I was taught and everything that I thought I believed in.

I became active in politics because I revere this nation. To have violated its laws and hurt the people I love,

in addition to causing a scandal for the 104th Congress that I cared so much about, is something that will haunt me the rest of the days of my life.

Mr. Kramer has stated some family history that, while true, does not take blame away from me. I am thankful, Your Honor, for the treatment that I have received. Both diseases are under control because of this treatment. It's up to me from here, and I do want to stay well.

I want to pay whatever debt to society is appropriate in the opinion of this Court. In the days that follow, I look forward to having the chance to earn back the opportunities and responsibilities that have always gone hand-in-hand with citizenship in a free society. Having failed to be responsible, I know that I must suffer the consequences of my actions. I accept that honestly and wholeheartedly. Only by doing so can I begin the painful, but rewarding, process of rehabilitation.

Thank you.

THE COURT: Thank you, Mr. Waldholtz. You may remain there.

I have ruled on all of the issues that your attorney raised with respect to the presentence report save the last one that we discussed, and that is, whether or not there should be an upward departure in your case. And I am convinced that the total offense level should be adjusted upward to account for your continuing criminal activity while you were on release.

Under 18 U. S. Code, Section 3553(b), a sentencing court may impose a sentence outside the applicable guideline range if there exists an aggravating or mitigating circumstance of a kind or to a degree not adequately taken into consideration by the Sentencing Commission. And I believe such aggravating circumstances are present in your case.

The Court of Appeals for this Circuit has held that post-offense misconduct is a proper basis for an upward departure in offense level if it shows extensive criminal involvement. You admitted at a September 26, 1996, hearing before me that you had committed numerous offenses during the four-month period of your release pending sentencing. And I don't have to go through all of those things; they have been gone through extensively here. But you did perpetrate fraud upon your family and friends and continued this practice, or your practice, of writing checks for which there were no funds on deposit.

I do not think, however, that your case fits into the enhanced penalty under Section 2J1.7, because you have not been convicted of a federal crime. But because your post-release conduct is not adequately taken into consideration by the Sentencing Commission, I am going to impose a three offense level upward departure.

I'm very pleased to hear what you had to say today, Mr. Waldholtz. You seem to be able to capture what is not only the

Court's concern, but the community's concern as well, and to state that you recognize your wrongdoing and that it will not occur again. But I think that was one of the reasons why I released you on your personal bond, and actually, I guess from the day I released you, you have engaged in conduct that you knew was criminal, that you knew was wrong, even if it were not criminal. And you knew that you had promised me faithfully right here in this courtroom that you would not commit another criminal offense while you were on your release.

Despite your guilty pleas, Mr. Waldholtz, you continued, even until this minute, to shift the blame for your action. You have told the probation officer in the past that you revere the Constitution. You have told that to me here today. And that you are a law-abiding person. You have suggested that you were corrupted by politics. I'm simply not convinced by your self-serving statements that you were corrupted by politics, or even that you revere the Constitution. Anyone who reveres the Constitution would certainly, I think, be willing to obey the laws of the country.

You convinced your wife, apparently -- your ex-wife, and her family that you had a substantial family trust fund when in fact there was no such trust fund. The bank fraud in this case was a very sophisticated scheme, requiring precise timing. And not only that, but it required an intimate knowledge of the financial institutions you deceived. The campaign finance fraud

shows careful planning, as you repeatedly concealed and misreported campaign contributions. Your continued deceit after your guilty plea, where you would cheat even your own father, demonstrates that you are a person who simply will not conform your conduct to that which is required of all citizens: Obey the law. Obey the laws of this country.

Rather than carrying out your important duties as a campaign treasurer, you attempted to win that election without any consideration of truth. You shamelessly spent funds in the Enid Greene campaign that you knew could not be used for campaign purposes. You continued on your illicit course, hiding the use of these funds from the public. Had illegal funds not been used in the campaign, or had your illegal actions been revealed before the election, the outcome of the election may well have been different. That is, of course, something none of us will ever know; and, thus, we will never know the full effect of your conduct.

But there is one thing, Mr. Waldholtz, that is certain, and that is, you abused the public trust. No sentence that this court has been authorized to impose is sufficient to atone for your attempts to manipulate an election, for bank fraud, for false statement, for failure to report campaign contributions, and for assisting in filing a fraudulent tax return. The burden of public disgrace that you alone have placed upon yourself and your family is also insufficient.

Perhaps, however, the person who shall suffer most because of your criminal conduct is your infant daughter. You certainly have not taken a step to consider how your crimes and misdeeds shall forever stain her.

Mr. Waldholtz, pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that you, Joseph P. Waldholtz, be, and you shall be, placed in the custody of the U. S. Bureau of Prisons for a term of 37 months.

I failed it write it in, but I think under the new guidelines, the minimum is 37 months.

MR. KRAMER: Yes.

THE COURT: For 37 months. This term consists of 37 months on Count 21 in Docket No. 96-143 and 37 months on Count One in Docket No. 96-185, 12 months on Count Two in Docket No. 96-185, and 36 months on Count Three in Docket No. 96-185. All counts shall run concurrently.

This is an upward departure based on your continued criminal activity while you were pending sentencing and because the seriousness of your offense in Docket No. 96-185 is underestimated by the guideline range as there was no loss in that case.

You shall pay restitution -- let me find that. You shall pay restitution in the sum of $10,920. Upon release from imprisonment, Mr. Waldholtz, you shall be placed on supervised release for a term of five years. This term consists of five

years on Count 21 in Docket No. 96-143, three years on Count One, Docket No. 96-185, and one year each on Counts Two and Three in Docket No. 96-185, all terms to run concurrently.

Within 72 hours of your release from custody to the Bureau of Prisons, you shall report in person to the probation office in the district to which you are released. While on supervised release, you shall not commit another federal, state or local crime; you shall comply with the standard conditions of probation or supervised release as adopted by this Court; and you shall comply with the following additional conditions:

Number one, you shall not possess a firearm or other dangerous weapon for any reason. Number two, you shall not use or possess an illegal drug, nor shall you associate with any known drug dealers or be present where illegal drugs are used, sold or distributed.

You shall participate in a substance abuse treatment program, which program may include testing to determine if illegal substances are being used, at the direction of the Probation Office.

You shall pay restitution to the Internal Revenue Service in the amount of $10,920, at the rate to be determined by the Probation Office.

Now, Mr. Waldholtz, I do find, after serious thought, that you do not have the ability to pay a fine, the costs of imprisonment or supervision, and because I have also entered

that restitution requirement. So, for those reasons, you will not be indebted to us for a fine or the costs of imprisonment. It is, however, further ordered that you must pay a special assessment fee on Count 21 in Docket No. 96-143 of $50, and $50 on each Counts One and Three in Docket No. 96-185, and $25 on Count Two in Docket No. 96-185, for a total special assessment fee of $175. This assessment should be paid as soon as possible, and certainly, if not paid before you complete your period of incarceration, it must be paid within 60 days of your release from prison.

I shall not make the recommendation that your attorney has requested. Mr. Waldholtz, I am very familiar with the boot camp, and I do not believe that it is appropriate. But I do believe that what it does offer to younger, less sophisticated individuals is something that you should strive for, and that is, to stay off illicit drugs and to devote your fine mind -- you have to have a good mind to be able to do what you have done, all right? To devote your fine mind to obeying the law.

And it is so ordered.

MR. KRAMER: Your Honor, in light of that, just one further request. And I discussed it with Mr. Iscoe before, who told me that he would not object. If Your Honor would recommend Allenwood as the place of incarceration. Mr. Waldholtz has an elderly father, who would like to visit him, and that would be the easiest place.

THE COURT: I would be very happy to recommend Allenwood. But understand me, that's all I can do, is recommend.

THE DEFENDANT: I understand, Your Honor.

THE COURT: I cannot tell the Bureau of Prisons where to imprison anyone. Even if I had recommended the boot camp, that would have been all that it would have been, is a recommendation. So, I certainly have no objections to recommending that you be placed at an institution where your father will be in a position to visit you.

THE DEFENDANT: Thank you.

MR. KRAMER: Thank you.

THE COURT: If there is nothing further --

MR. KRAMER: Your Honor, the counts of the original indictment need to be dismissed.

THE COURT: Yes.

MR. ISCOE: Yes, Your Honor. At this time, the Government dismisses the remaining counts of the indictment in Case Number 96-143.

THE COURT: All right. And 185, all counts he's pled to.

MR. ISCOE: He pled to all counts in 185.

THE COURT: All right. So it's so ordered.

MR. KRAMER: Thank you.

THE COURT: The best of luck to you, sir.

THE DEFENDANT: Thank you, Your Honor.

(Recessed at 11:15 a.m. and resumed at 11:25 a.m.)

THE COURT: We are resuming the case of United States versus Joseph Waldholtz, Criminal No. 96-143 and Criminal No. 96-185.

Mr. Waldholtz, I'm sorry to have to bring you back, but I failed to advise you of your right to appeal. You have an absolute right to appeal your sentence in this case; you have the right to appeal any other rulings that I made here contrary to those which you and your attorney argued. All right? That appeal must be noted within ten days of today's date.

I can assure you that if you wish to appeal any or all issues that were ruled on contrary to your legal view, Mr. Kramer will be happy to note that appeal for you and in a timely fashion.

You also know, sir, that because I still don't know what happened between you and the attorneys you had retained, because I did not know what had happened there, I asked Mr. Kramer, who heads our Federal Public Defender Service, to represent you. And apparently we have been able to determine that that was appropriate. So, if you wish to appeal, you can go straight to the Court of Appeals, and you can ask them, the judges up there, to appoint counsel for you in the Court of Appeals.

So, I'm sorry I forgot to do that.

MR. KRAMER: I apologize for overlooking that, too, Your Honor.

THE COURT: Yes. I really am sorry.

MR. KRAMER: He has been advised, but thank you very much.

THE DEFENDANT: Yes. Thank you.

THE COURT: Thank you very much. And you may step back now.

MR. ISCOE: Thank you, Your Honor.

THE COURT: Mr. Iscoe, I'm sorry, but while he was still here, it was important to do that.

MR. ISCOE: I'm glad Your Honor caught it. I would have realized it by the time I got back to my office, perhaps, but I'm glad Your Honor thought of it sooner.

THE COURT: Thank you.

(Proceedings concluded at 11:27 a.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcription from the record of proceedings in the above-entitled matter.

_____

Official Court Reporter

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MINIMUM SECURITY

EAMON JAVERS

*Joe Waldholtz, former unpaid chief of staff to his then wife, Rep. Enid Greene Waldholtz, at Allenwood Federal Prison Camp.*

# *Joe Waldholtz in prison: slimmer, sober and penitent*

**By Eamon Javers**

Joe Waldholtz, inmate number 20396-016, walked into the visitor's room at the Allenwood Federal Prison Camp in central Pennsylvania Monday morning to tell the tale of his fantastic rise and fall as Congress' most spectacular election law breaker.

But the first words out of his mouth were a lie, his ex-wife Enid Greene said later.

As he stepped into the interview room this week, Waldholtz told an interviewer, "Enid sure was angry when I told her I was going to talk to you."

Enid, reached by telephone at her home in Salt Lake City, said that was a lie — Joe had, in fact, told her he was not going to break his press silence. "This is vintage Joe Waldholtz," Greene said. "This shows the extent of the games he continues to play, even in prison."

Waldholtz, tanned by outdoor exercise and nearly 300 pounds slimmer than the 487 pounds he weighed at his peak, is serving a 37-month sentence for election fraud.

His daily routine consists of rising at 5:30 a.m., often followed by a morning run on the jogging trail of the prison compound, which has no fences. Then comes breakfast, which is served in Allenwood's communal cafeteria. Next, he heads to work. Each inmate has a task each day — Waldholtz says he has worked at the complex's power plant, then as a clerk for the camp's parenting and job skills program, and now in general maintenance in his dormitory-style building, Unit C.

He also attends substance abuse counseling sessions "very, very regularly," saying, "I've spent a lot of time working on sobriety and a lot of time working on the physical side of things."

His arrest and the subsequent revelations that he had embezzled more than $4 million from his father-in-law and used it to finance his wife's congressional campaign brought down the career of Rep. Enid Greene Waldholtz (R-Utah), who hadn't completed her first term when the scandal

■ CONTINUED ON PAGE 36

# TV stations ration campaign advertising, citing high demand

**By Lindsey Sobel**

Due to record-breaking spending on primaries this year, the demand for political advertising time has been so high that television stations cannot — or will not — sell candidates all the time they would like to buy.

As a result, candidates are charging television stations with silencing debate, while stations insist that they are doing their best to balance the overwhelming demands of candidates with their own need to run a profitable business.

"It doesn't seem like too much to ask to make time available to candidates who want to debate important issues," said Steve McMahon, a Democratic media consultant. "Stations would rather run Pizza Hut ads than ads for candidates, because stations make more money on Pizza Hut."

Stations are required to offer reasonable advertising time to federal candidates — but not state and local ones — and to offer equal time to all candidates in the same race. Since stations must offer candidates lower rates, commercial advertising is more profitable for the stations.

Alan Buckman, director of sales for the television station KPIX in San Francisco, was amazed at the demand for ad time for the California primaries this month. "We anticipated it to be large, but more money kept coming in and coming in," he said. "Far more than the representatives for the candidates initially told us."

"If they could have, they would have bought every ad on the station," he said. As a result of heavy demands by Democratic gubernatorial hopefuls Al Checchi and Jane Harman, "When we looked at what they wanted, we basically cut them way back," he said.

Susan Neilson, media liaison for KCBS-

■ CONTINUED ON PAGE 6

# Idaho delegation backs funds for rancher dad of staffer

**By Jock Friedly**

The Idaho congressional delegation is backing unusual legislation that would compensate private ranchers who will be displaced as the Air Force prepares a bombing range on federally owned grazing lands.

The idea of using public funds to reimburse ranchers for land they don't even own has caused environmental activists and federal land management officials alike to fear the precedent it could set.

But what also has raised eyebrows is that only one rancher is expected to benefit: Bert Brackett, a long-time political supporter of Idaho Republicans whose daughter, Jani, is a legislative assistant here in Washington for one of the backers of the bill, Sen. Larry Craig (R-Idaho).

Craig's office said Jani Brackett has played no role in the matter. "She's kept entirely out of the loop on anything dealing with this legislation, as well it should be," said Craig Press Secretary Michael Frandsen. "I couldn't even talk to her. She didn't know anything about this."

Furthermore, supporters insist that the legislative language — authored by Sen.

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# *Senators from same state put eggs in one basket*

**By Mary Lynn F. Jones**

Virginia Democrat Chuck Robb was wary about joining the powerful Armed Services Committee when he was first elected to the Senate in 1988.

Despite his extensive Marine background, including nine years of active duty, Robb, who joined the Foreign Relations Committee at the time, didn't ask for a seat on the committee that already included the state's senior member, former Navy secretary and then-ranking Republican John Warner.

While Robb said he was ultimately recruited to the committee by former Panel Chairman Sam Nunn (D-Ga.) and several of the service chiefs, his initial reluctance isn't a surprise considering Senate protocol and electoral prospects. Stacking a committee with two same-state senators, who could favor their home state in committee business and pursue policy areas too narrowly focused to satisfy broader voter interests, was considered unwise.

When two senators from the same state

■ CONTINUED ON PAGE 12

# Waldholtz in prison: slimmer, sober, penitent

■ CONTINUED FROM PAGE 1

*broke.*

Greene said Waldholtz is a psychopath and a liar, and that his schemes to defraud others won't end when he is released from prison — which, depending on his good behavior, could come as early as December or January.

Waldholtz, dressed in a tan prison outfit and white New Balance sneakers, considers himself like any other disgraced political official who can go to prison, learn his lessons, and return to society. He plans to get an MBA degree upon his release and says he will start life anew — away from political Washington, away from Enid in Utah, and away from his angry family in Pennsylvania.

He attributes much of his problem to substance abuse that started with marijuana and painkillers and blossomed to include injecting heroin by the time he was caught.

Asked why he pretended to be the heir to a $400 million fortune while he defrauded his new family after his marriage to Enid, Waldholtz said, "Obviously, it made me feel better about myself. I don't think it takes a rocket scientist to see that it fits with the substance abuse and weight problem."

But Enid, now living with the couple's almost-3-year-old daughter, Elizabeth, is unforgiving. "What else do you expect him to say? He has no remorse. ... he is not rehabilitated, he is not a normal person. ... I have to now live with this for the rest of my life."

Greene said she is finally happy with her life, but that she wants to go back to work soon, either as a lawyer or for a large Utah corporation. She says her future won't necessarily include politics, that she "would like to rebuild my reputation." Politics can wait. "If that opportunity arises at some point in the next 40 years, maybe I'll do it, but it's not something I need to do again."

• • •

Waldholtz, asked when his charade began, said, "God, I can't give you any specific on that, but it was something that was there for a long time. In politics, people like to pretend they're a lot of things that they're not, or to shift things ever so slightly. ... It's the spin, the image, a lot of people are caught up in all that."

But he now says the mirage he presented to the public was "Stupid. Unnecessary. And very much a part of the past."

Waldholtz said his scheme to secretly defraud Enid's father of millions of dollars they would need to run a second congressional campaign in 1994 began when Enid was defeated in her first race for Congress in 1992, against Rep. Karen Shepherd (D-Utah). "Neither of us could stomach the loss. And I'm not proud of that. Not proud of that at all."

He said he knew that they would need more money than Enid could or would raise well before the 1994 election, and that's when he started his periodic calls to Enid's wealthy father, Forrest Greene, for "loans" that he then funneled into their campaign — in violation of election law.

Enid, he maintains, was unaware of his plans. "Was Enid ambitious? Yes. Misleeds? No. Enid is a supremely talented individual, one of the finest public speakers I've ever seen. Enid will definitely be back. And I'll be rooting from the sidelines."

RAMON JAVIERS

*Joe Waldholtz at Allenwood Prison Camp.*

Ultimately, the Department of Justice agreed with Enid's argument that she had been duped by Waldholtz and cleared her of wrongdoing — albeit in a process that she now says was carried out for too long by prosecutors out to make their own reputations.

Talking about the method of his crimes, Waldholtz speaks in the passive voice, almost as if he is reluctant to admit that it was he who committed the crimes he describes. "A lot of stories were circulated about supposed gifts, supposed trusts, supposed real estate swaps, that's all been talked to death," he said. "Stories were invented for the situation that we needed."

After losing weight during his lengthy court battle, Waldholtz has lost 125 pounds since coming to Allenwood, which is sometimes derisively called "Club Fed," for its minimum security luxuries for prisoners — the greatest of which is that the complex is not fenced in. During any of his daily runs on the compound's jogging track, Waldholtz could easily slip into the woods and make a break for it. He doesn't try to escape, he said, because that will only bring him more — and harder — time.

Nestled next to a private golf course and a technical college, a passerby could easily mistake Allenwood for nearby Susquehanna High School. Most of the inmates are there for non-violent drug offenses, but 21.9 percent are there for extortion, bribery or fraud. Only 1.8 percent are there for white-collar crimes, according to a fact sheet provided by the Bureau of Prisons.

Waldholtz still finds time for leisure activities that he says friends in Washington would be shocked at. His excess weight and pasty pallor gone, he says he's focused on keeping the weight off.

He says, "I run, do aerobics, lift weights. Play a mean game of bocce. I'm a very ardent supporter of the softball team. ... [This] shocks people to death because I was Mr. Indoor Person."

"I'm doing a lot of things I haven't done before," he said, "and I'm healthier for it."

# Joe Waldholtz: In his own words

*Joe Waldholtz sat down with The Hill at Allenwood Federal Prison Camp Monday to break his media silence about his crimes. He spoke with The Hill's Eamon Javers. Following are excerpts from the conversation.*

**SUBSTANCE ABUSE**

**Q: How long were you in rehab, and what was that process like?**

A: 10 days. ... Rehab was necessary, rehab was tough, and rehab was the beginning of an opportunity that you know is carrying forward to this day.

**Q: You were addicted to painkillers, and you were using regular street grade heroin?**

A: You know it's funny, I still kind of cringe in talking about that. I had a problem with narcotics for years. When someone weighs 487 pounds, obviously, you're not real comfortable with yourself. And I was in politics and the narcotics seemed to help. There were times of sobriety in there, but it was like a dry drunk.

**Q: When did you first start using drugs? When you were a kid? When you were already working in politics?**

A: Experimenting as a kid.

**Q: And what kinds of drugs did you start with?**

A: Silly stuff that everyone starts with.

**Q Marijuana ...?**

A: Right. Uh, but it didn't become a problem until years later. I deeply regret my substance abuse. It makes sense to me now, the weight, the abuse of narcotics. It makes sense. And its pretty simple to understand what was wrong. I wish I'd done that at the time.

**Q: There are a lot of people who would burst out laughing to hear Joe Waldholtz talking about living life in a law-abiding fashion. You're a guy who, after you were busted for the first time for check kiting, continued to write bad checks, continued to do drugs, so that was a warning scare that didn't shock you straight. Why would two years, three years at Club Fed shock you straight?**

A: Uh, I was pretty sick at the time. I'm not now. There were things I needed to deal with that I didn't.

**Q: What's changed?**

A: Sobriety, for one. Which is just an incredible, incredible thing. I almost consider it a gift. I don't want to sound preachy — people in Utah would accuse me of sounding Mormon, but it's just different. I really messed up. And I just couldn't seem. ... I couldn't see a way out of it. There were times I really didn't think I was going to make it through.

**THE CHARADE**

**Q: [Y]ou, from very early in your relationship with Enid, affected the life of a multi-millionaire, and gave everyone the impression that you were a very wealthy man, that you had access to this Waldholtz family trust. Why did you feel the need to do that?**

A: Well first, the specifics like that were never discussed, at that point. Obviously, it made me feel better about myself. I don't think it takes a rocket scientist to see that that fits in with the substance abuse and the weight problem.

**Q: When did you first start letting on that you were a wealthy man, wealthier than you really were?**

A: God, I can't give you any specific on that but it was something that was there for a long time. In politics, people like to pretend they're a lot of things they're not, or to shift things ever so slightly.

**Q: You say shift things ever so slightly in politics?**

A: Yeah, it's the spin, the image, a lot of people are caught up in all that.

**Q: Did it start out so, like you say, ever so slightly and then snowball?**

A: Right. Stupid. Unnecessary. And very much a part of the past.

**Q: You're the boy who cried wolf in this scenario. You, according to all the allegations, stole money from your grandmother, your employer in Pittsburgh, from your father-in-law, to the tune of $4 million. You were also using illegal narcotics during the course of this whole time. Once you were caught, you continued to use the narcotics, continued to write bad checks, and steal credit cards from your own lawyers during this whole time frame. Some people say**

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# Joe Waldholtz: Thoughts on scandal and prison

■ CONTINUED FROM PAGE 36

that you're either sick with some kind of *mental instability or* that there's some malicious kind of anger. Get back at society. Why did you do it?

A: Um, again, not responding to all of those allegations, some of which are interesting, why did I do the election thing? To win.

Q: What about the $4 million that came from Mr. Greene?

A: To win.

Q: What about the lavish lifestyle, the silk ties, the terrific suits, the great shoes.

A: Those are the things that I kind of have a problem with because I don't want to point the finger at any others in this situation. I'll just say that at the weight that I was, clothing was hardly one of our biggest expenses for me. And I'm just going to leave it there because I have nothing negative to say about anyone. And I have read with some good humor some of the things that have been written and that's okay. That's political spin and that's fine. Army-Navy surplus stores. Clothing was not a big expense of ours, for me. That's laughable and I just won't get into anything else about that.

Q: What about the art? At the same time you're living on borrowed, if not stolen, money, at that point from Mr. Greene, but you're buying $25,000 pieces of art.

A: I'm not going to get involved in the tennis match back and forth of "He said, She said." I'm just going to leave that stuff where it is. I don't really. Again, I find it surprising, if not funny that of the things that were commented on in our lifestyle, it was my ties and my suits. And I'll just leave it there. No one else needs to be hurt or dragged through anything. It's just past.

*CLUB FED*

Q: Is this Club Fed? Is this hard time?

A: Club Fed doesn't exist. Is it hard time? No, but Club Fed does not exist. ... It's not a gulag, but this isn't Maui, and you can't go home and get on with your family and friends, and you're not as productive as you could be. So rather than looking at the negative side of it by saying, it's Club Fed, he lost weight, isn't that great, I ... a lot of people come here, and like I said earlier, this choice is made. You can either be on this negative trip or you need to figure out what you need to do and you go do it, and that's entirely up to the individual, because the system doesn't provide for that, and most people think it really shouldn't. It's up to the individual to make it or fake it. I've chosen to make it.

THE CLINTON SCANDALS:

Q: Are you keeping up with the Clinton scandals?

A: Let me just say this about our president. ... At some point, speaking as one who lived a charade, it's time for the charade to end. I take no pleasure or pride in saying that, but I find what the White House does offensive. I look forward to a change in leadership there. ... I'm in here for election fraud, so after everybody is done throwing mud at me for what I did, I really think I can actually speak about that issue. And there's just too much of it. It's just gone too far, too often. And they're very slick and very good at how they deal it, and my hat's off to them for that. But it really does hurt the country, and it certainly diminishes the office. I know, because I did the same thing.

Q: Ironically the same judge ...

A: I know. I've read. Judge [Norma Holloway] Johnson [the same judge presiding over the Clinton case] is a fair judge. I think she ...

Q: She was pretty tough on you, though.

A: She was right. I agree with what she said. ... I think it's going to be quite an interesting summer for the Clinton White House.

GREENE BRIEF

## Greene says Joe won't reform

Former Rep. Enid Greene (R-Utah) did not rule out a return to politics in an interview Monday, although she called the possibility unlikely.

Almost three years after the scandal that drove her from office, Greene said her attention is fully focused on her daughter, Elizabeth, who will be 3 years old in August. "There's no question she will be hurt by this. She won't get a normal Ozzie and Harriet lifestyle, like I expected she would," Greene said. "To add to that is this whole strange and sordid episode. I want to make sure she's grounded so she doesn't wake up some day and say, 'There's something wrong with me because of who my father is.'"

As for Joe Waldholtz, Greene expects him to continue to swindle people when he gets out of jail next year. "He will find somebody else. There's no question that when you deal with him, if he wants to make you a believer, he is very convincing."

— EAMON JAVERS